

Table of Contents

through December 31, 2007, Presque Isle Downs earned net revenues of \$149.9 million, including gaming revenues of \$141.5 million (average daily net win per machine of \$231). The facility generated operating income of \$13.2 million, inclusive of project opening costs of \$3.0 million, marketing and promotion costs of \$6.0 million, general and administrative expenses of \$13.8 million and depreciation of \$10.5 million.

Scioto Downs' Operating Results:

The operating results for Scioto Downs include simulcasting, which is operated year-round, and live harness racing, which is conducted from early May through mid-September, as well as food and beverage operations. During 2007, Scioto Downs scheduled 80 live racing dates, the same number of race days as in 2006. The property's net revenues decreased by \$0.9 million during 2007 as compared to 2006, principally as a result of the declining racing handle. The operating loss for 2007 decreased by approximately \$2.1 million as compared to 2006 as a result of payments of \$3.0 million in 2006 to support a slot machine referendum in Ohio, revenue declines offset in part by other expense reductions.

North Metro Operating Results:

In April 2007, North Metro obtained \$41.7 million of financing that is without recourse to us and commenced construction of the harness racetrack and card room, and is required to complete 50 days of live racing and commence card room operations no later than July 1, 2008 in accordance with its financing agreement. Upon execution of the non-recourse financing obtained by North Metro, we concluded that North Metro was no longer a variable interest entity in accordance with FASB Interpretation No. 46, "Consolidation of Variable Interest Entities," ("FIN 46") and subsequent revision FIN 46R. Therefore, effective April 30, 2007, we deconsolidated North Metro and applied the equity method of accounting to our investment in North Metro in accordance with FIN 46. Prior to April 30, 2007, the operations of North Metro Harness were consolidated as part of our operating results, net of minority interest. Through April 30, 2007, MTR-Harness incurred an operating loss of \$321,000 and recorded minority interest of \$144,000. Since this time through December 31, 2007, MTR-Harness recorded \$234,000 of equity in loss of an unconsolidated joint venture.

Corporate and Pre-Opening Costs:

During the year ended December 31, 2007, corporate and pre-opening costs increased by \$4.0 million, or 29.2%, to \$17.5 million compared to 2006. The increase in expenses was primarily due to:

- an increase in costs of \$2.6 million and \$0.7 million related to the pre-opening activities of table games at Mountaineer and the development and pre-opening of Presque Isle Downs, respectively;
- an increase in compensation and benefits of approximately \$1.1 million;
- an increase of \$0.9 million related to stock-based employee compensation;
- an increase of \$0.4 million related to other strategic development costs, primarily related to the sale of Speedway and Binion's; offset by
- a decrease of \$0.4 million related to insurance costs;
- a decrease of \$0.4 million related to the development of Presque Isle Downs;
- a decrease of \$0.3 million related to our efforts in 2006 to participate in a stand-alone casino in Pittsburgh;

Table of Contents

- a decrease of \$0.4 million in costs incurred in 2006 in consideration of a management buyout proposal.

Depreciation Expense:

During 2007, depreciation expense increased by \$7.7 million compared to 2006, primarily due to the opening of Presque Isle Downs. Presque Isle Downs' depreciation increased \$10.4 million. This increase was partially offset by a decrease in Mountaineer's depreciation of \$3.2 million.

Interest:

The increase in interest expense, net of interest income, of \$19.3 million in 2007 compared to 2006 is primarily attributable to the increased borrowings under the senior subordinated notes (May 2006), equipment financing for Presque Isle Downs and borrowings under our credit facility, as well as decreases in capitalization of interest related to the construction of Presque Isle Downs. Interest capitalized during 2007 was \$2.2 million compared to \$6.0 million during the same period of 2006. Additionally, we incurred \$0.6 million of incremental amortization of deferred financing fees (included in interest expense) principally associated with our senior subordinated notes and the amendment to our credit agreement.

The decrease in interest income during 2007 resulted from the utilization of funds from, and corresponding decline in interest earned on, proceeds from the 9% senior subordinated notes.

Provision for Income Taxes:

The income tax benefit in 2007 was computed based on an effective federal income tax rate of 30.5%, plus applicable state income tax provision (benefit), if any, associated with the operations of Presque Isle Downs and interest expense related to uncertain tax positions in income tax expense, as compared to a provision for income taxes of 54.5% in 2006. The effective income tax rates are reflective of permanent non-deductible expenses. During 2007, we recognized interest expense related to uncertain tax positions of approximately \$217,000 (net of tax).

Discontinued Operations:

Binion's Gambling Hall & Hotel. During 2007, net revenues earned from Binion's of \$59.8 million were comparable to 2006, although gaming revenues and other revenues declined by \$0.5 million and \$0.2 million respectively and were offset in part by increases in food, beverage and lodging revenues of \$0.7 million. During 2007, Binion's experienced a pre-tax loss of \$7.9 million which includes approximately \$0.8 million of unemployment tax, which the State of Nevada had failed to assess because of its error in determining the applicable tax rates, compared to an operating loss of \$5.4 million in 2006. Additionally, in the first quarter of 2007, Binion's received approximately \$1.3 million as a cash distribution (in lieu of common stock) for its interest as a member (policyholder) in a mutual insurance company that converted to a stock corporation and completed a successful public offering. In the fourth quarter of 2007, Binion's recorded a loss of \$2.0 million to adjust the carrying value of Binion's assets to the anticipated proceeds from the sale of Binion's, less costs to sell. As a result of classifying Binion's as held for sale, we discontinued recording depreciation in October 2007.

Table of Contents

Ramada Inn and Speedway Casino. During 2007, net revenues earned from Speedway were \$11.0 million compared to \$9.2 million during 2006, a decline of 8.5% which resulted primarily from a decrease in revenue from gaming operations of approximately \$0.9 million; and operating income was \$0.4 million and \$1.6 million, respectively, which resulted in a decrease in operation margin to 3.9% from 13.3%, respectively. The decrease in operating margin was due to the revenue decline and increased marketing and general and administrative expenses. During 2007, Speedway's pre-tax income was 0.1 million compared to \$1.2 million in 2006.

Jackson Racing (d/b/a Jackson Harness Raceway). During 2007, net revenues earned from Jackson were \$3.1 million compared to \$3.2 million during 2006, and operating losses, before the 10% minority interest not owned by us, were \$0.6 million and \$0.4 million, respectively.

Cash Flows

Our operating activities produced \$14.7 million in cash flow during 2008, compared to \$15.0 million during 2007. Current year non-cash expenses included \$29.8 million of depreciation and amortization and \$3.8 million in write-offs of deferred financing fees resulting from modifications of long-term debt. In 2008, operating activities also included \$12.3 million of equity in loss of North Metro Harness Initiative, LLC. Included in cash flows from operating activities for 2008 was \$2.5 million used in discontinued operations compared to \$3.2 million provided by discontinued operations for 2007.

Net cash provided by investing activities was \$41.5 million during 2008, compared to \$146.8 million used in investing activities during 2007. In 2008, we invested \$11.7 million in property and equipment and generated proceeds (net of closing and other costs) from the sale of Speedway and Binion's in the amounts of \$12.8 million and \$28.3 million, respectively. In 2007, we invested \$86.8 million in property and equipment and other capital improvements (including the construction of Presque Isle Downs), exclusive of \$6.8 million financed by capital lease obligations. During 2007, we also paid the Commonwealth of Pennsylvania a fee of \$50 million for Presque Isle Downs' slot license and incurred certain other license costs. In addition we purchased an off-track wagering facility for \$7.1 million and paid \$8.0 million into a Rabbi Trust in accordance with the provisions of an employment agreement with our former Chief Executive Officer. Included in cash flows from investing activities for 2008 and 2007 was \$0.1 million and \$2.0 million, respectively, used in discontinued operations.

Net cash used in financing activities was \$58.2 million during 2008, compared to \$144.1 million provided by financing activities during 2007. In 2008, principal payments on long-term obligations aggregated \$54.7 million, including \$27.6 million from the proceeds on the sale of Binion's. In 2007, we borrowed \$143.4 million under our credit facility and \$15.1 million related to equipment financing arrangements. Also in 2007, we paid \$7.8 million for financing fees associated with an amendment to increase the credit facility and the related consents of the holders of our senior notes and senior subordinated notes. Included in cash flows from financing activities for 2008 and 2007 was \$23,000 and \$133,000, respectively, used in discontinued operations.

Liquidity and Sources of Capital

We had working capital of \$407,000 as of December 31, 2008, and our unrestricted cash balance amounted to \$29.0 million. Included in working capital at December 31, 2008 is the classification of \$7.5 million outstanding under our senior secured revolving credit facility to "current obligations" associated with our credit agreement's mandatory scheduled commitment reductions in 2009. During 2008, we sold the Ramada Inn and Speedway Casino and Binion's Gambling Hall & Hotel. The sales of these assets provided additional funding of approximately \$41 million of which \$27.6 million was used for repayment of debt and the remaining amount was contributed to working capital to be used

Table of Contents

for operations. In addition, we sold our corporate airplane for \$1.8 million and used \$1.6 million of the proceeds to repay the outstanding debt related to the airplane.

At December 31, 2008, the balances in bank accounts owned by Mountaineer's horsemen, but to which we contribute funds for racing purses, exceeded our purse payment obligations by \$1.9 million. This amount is available for payment of future purse obligations at our discretion and in accordance with the terms of its agreement with the Horsemen's Benevolent & Protective Association ("HBPA"). We also earn the interest on balances in these accounts.

On September 26, 2006, we entered into the Fifth Amended and Restated Credit Agreement, which provided for a five-year maturity and consisted of a senior secured revolving credit facility in the amount of \$105.0 million (including a commitment for an increase of the credit facility up to an additional \$50.0 million subject to certain conditions). Of this amount, \$60.0 million was to be available for letters of credit and up to \$10.0 million for short-term funds under a "swing line" facility.

The credit agreement bore interest based, at our option, on either the agent bank's base rate or LIBOR, in each case plus a margin that was based on our leverage ratio at the time, which ranged from 100 to 212.5 basis points for the base rate loans and 175 to 287.5 basis points for the LIBOR loans. We were also required to pay a quarterly non-usage commitment fee which is based upon the leverage ratio. The credit agreement also contained covenants that restricted our ability to make investments, incur additional indebtedness, incur guarantee obligations, pay dividends, create liens on assets, make acquisitions, engage in mergers or consolidations, make capital expenditures or engage in certain transactions with subsidiaries and affiliates.

On June 19, 2007, we entered into the First Amendment to the Fifth Amended and Restated Credit Agreement. The First Amendment among other things (i) provided for an increase of the aggregate commitment (as defined in the Agreement) from \$105.0 million to \$155.0 million; (ii) increased the maximum permitted expansion capital expenditures for our Presque Isle Downs facility from \$256.0 million to \$296.0 million; and (iii) increased the permitted investments in MTR-Harness, Inc. from \$12.5 million to \$15 million.

On March 31, 2008, we entered into the Limited Waiver and Second Amendment to the Fifth Amended and Restated Credit Agreement. The Second Amendment among other things (i) provided for a decrease of the aggregate commitment (as defined in the credit agreement) from \$155.0 million to \$125.0 million; (ii) eliminated the LIBOR loan option and established the interest rate at prime plus 2.25%; (iii) restricted the amount of additional borrowings unless certain pro-forma leverage ratios are achieved; (iv) revised the maturity date from September 27, 2011 to March 31, 2010 provided the senior unsecured notes are fully refinanced by October 1, 2009; (v) commenced commitment reductions on September 30, 2008 versus December 31, 2008; (vi) limited additional investments in MTR-Harness, Inc. (which owns a 50% interest in North Metro Harness Initiative, LLC) and Jackson Racing, Inc. (which owns a 90% interest in Jackson Trotting Association, LLC) subsequent to March 31, 2008 to \$1.25 million in the aggregate; and (vii) modified certain covenants and related definitions. In connection with the Second Amendment we were required to pay fees of \$2.8 million, exclusive of legal fees and other costs.

On May 9, 2008, we entered into the Third Amendment to the Fifth Amended and Restated Credit Agreement. The Third Amendment among other things revised the definition of investments to include investments made after May 9, 2008 in North Metro consisting of a guaranty or guarantees by the Company in favor of an approved equipment financing company so long as the maximum liability under such guaranty or guarantees and, accordingly, the maximum amount of such investment does not exceed \$1.1 million in the aggregate.

On December 19, 2008, we entered into the Fourth Amendment to the Fifth Amended and Restated Credit Agreement. The Fourth Amendment among other things (i) reduced the aggregate

Table of Contents

commitment under the agreement from \$125 million to \$110 million; (ii) revised the aggregate commitment reduction schedule; (iii) revised the definition of base rate and applicable margin with respect to the applicable interest rate and computation of fees and charges; (iv) revised the definition of EBITDA to include a provision for one or more addbacks for severance costs for a specified period up to \$2 million; (v) revised the definition of excess cash on hand for covenant calculation purposes; and (vi) revised the required refinancing date of the senior unsecured notes from October 1, 2009 to January 2, 2010. Additionally, during each quarter of 2009 through January 1, 2010, the margin with respect to the applicable interest rate increases by $\frac{1}{2}\%$ from 2.75% to 4.75%, respectively, on the total amount outstanding under our credit facility.

As a result of the Second and Fourth Amendments to the credit agreement and the reduction in borrowing capacity, we were required to proportionately reduce the amount of existing deferred financing costs. Consequently, we recorded write-offs of deferred financing costs of approximately \$3.8 million during 2008. This amount is reflected in the consolidated statements of operations as a loss on debt modification.

The credit agreement, as amended, contains customary affirmative and negative covenants that include the requirement that we satisfy, on a consolidated basis, specified quarterly financial tests. We maintained compliance with these covenants as of December 31, 2008. Although we anticipate that we will maintain compliance with these covenants for each of the quarters in the year ending December 31, 2009, failure to meet these financial tests could result in a demand for the acceleration of repayment of amounts outstanding under the credit facility and would have a material adverse effect on our financial position and could raise substantial doubts as to our ability to continue as a going concern.

The amount that may be borrowed under the credit agreement is subject to a debt incurrence test provided by the indentures governing our senior unsecured notes and senior subordinated notes. Prior to entering into the First Amendment, we obtained the required consents from the holders of our senior notes and senior subordinated notes to amend the indentures governing the senior notes and senior subordinated notes. The amendment to the indentures increased the permitted debt "basket" (i.e. the amount we may borrow whether or not we satisfy the debt incurrence tests) for debt incurred under our credit facility from \$85.0 million to \$135.0 million. We paid a consent fee equal to \$7.50 and \$20.00 per \$1,000 of principal to the holders of the senior notes and senior subordinated notes, respectively, or an aggregate of \$3.4 million. Commencing in the second quarter of 2008 and until the senior subordinated notes are no longer outstanding, we are required to pay additional consent fees of \$5.00 per \$1,000 of principal to the holders of our senior subordinated notes if we do not satisfy certain quarterly financial ratios. We have not met these ratios and therefore recorded additional expense of \$1.875 million for the last three quarters of 2008. We also anticipate that we will have to pay these fees into 2009 depending upon the level of reduction of our outstanding debt.

In order to borrow additional amounts that would be subordinated to amounts under the credit agreement, we must satisfy the debt incurrence tests provided by the credit agreement, and for amounts in excess of the amended permitted debt basket and the \$10 million other permitted indebtedness basket under the indentures governing the senior unsecured notes and senior subordinated notes (subject to limitations under the credit agreement), we must either satisfy the debt incurrence tests provided by the indentures or obtain the prior consents of the holders of at least a majority in aggregate principal amount of those notes that are not owned by the Company or any of its affiliates. Currently, our borrowings under the credit facility are limited to a total of \$107.3 million, subject to further mandatory scheduled commitment reductions of 2.5% per quarter that commenced December 22, 2008 through September 22, 2009, and 5% for the quarter ending December 31, 2009.

Obligations under the credit agreement are guaranteed by each of our operating subsidiaries. Borrowings under the credit agreement and the subsidiary guarantees are secured by substantially all of

Table of Contents

our assets and the assets of the subsidiary guarantors. Future subsidiaries will be required to enter into similar pledge agreements and guarantees.

Our credit agreement, as amended, likewise requires us to refinance our senior unsecured notes with other unsecured indebtedness by January 2, 2010 on terms and conditions acceptable to our senior secured lenders. If the senior unsecured notes are not refinanced prior to this date, the maturity date of the amounts outstanding under our credit facility will be accelerated to January 2, 2010. In any event, our credit agreement expires March 31, 2010. Particularly in light of the downturn in the national and worldwide economies and the current state of the credit markets, we cannot assure you that we will be able to refinance our senior unsecured notes by January 2, 2010 and our credit agreement (\$101.9 million outstanding as of March 1, 2009) by March 31, 2010 on terms acceptable to us, on terms acceptable to our senior secured lenders, or at all or that we will be able to obtain extensions of the maturity deadlines. We are currently evaluating our financing options and are in discussions with our lenders and advisors. Amounts outstanding under the credit facility will be classified to "current obligations" for financial reporting purposes at March 31, 2009. In the event our credit facility is classified as a current obligation and we are unable to demonstrate our ability to refinance amounts outstanding under our credit facility, it would affect our independent auditors' assessment of our ability to continue as a going concern. A going concern emphasis in the audit opinion could cause our senior secured lenders to declare a default and accelerate the debt, which in turn, would constitute an event of default under the indentures governing our senior unsecured notes and senior subordinated notes.

At December 31, 2008 and 2007, borrowings of \$101.9 million and \$143.4 million, respectively, and letters of credit for approximately \$1.5 million were outstanding under the credit facility. On March 7, 2008, we utilized \$27.6 million of the proceeds from the sale of Binion's to reduce amounts outstanding under the credit facility, and during 2008, we further reduced amounts outstanding under the credit facility by \$13.9 million. The credit agreement also requires mandatory scheduled commitment reductions that will reduce the available borrowing commitment to \$94.4 million by December 31, 2009.

Additionally, during 2007 we entered into the following other debt financing arrangements:

- Presque Isle Downs entered into seven promissory note arrangements for financing the purchase of 1,950 slot machines and a player tracking system. The promissory notes aggregated \$29.6 million. Under the terms of the notes, we are required to make monthly installments of principal and interest (in varying amounts) through October 2010. The interest rates on the notes range from LIBOR plus 3.25% to 8.08% per annum. At December 31, 2008, there was an aggregate of \$14.2 million outstanding under the promissory notes.
- Mountaineer entered into a capital lease obligation to finance the purchase of surveillance equipment totaling \$4.1 million. Mountaineer requested draws on the capital lease as the surveillance contractor met milestones set forth in the purchase contract. During 2008 and prior to completing the financing, we borrowed \$0.5 million under this capital lease. The financing was completed in June 2008 at terms that include repayment over 36 months with interest at the rate of 6.21% per annum. At December 31, 2008, there was \$3.5 million outstanding under the capital lease obligation.
- Mountaineer entered into a promissory note for \$1.4 million to CIT Lending Services Corporation. The funds were used to pay for 120 slot machines. Under the terms of the note, interest is payable monthly beginning on October 1, 2007 and principal is payable in 31-monthly installments of \$44,977 beginning on October 1, 2007 through April 1, 2010, with the final installment to include all principal and interest. Interest on the unpaid principal balance is LIBOR plus 3.25% per annum. As of December 31, 2008, there was \$0.7 million outstanding under the promissory note.

Table of Contents

- Mountaineer entered into a capital lease obligation for approximately \$1.8 million to finance the purchase of 137 slot machines. The lease agreement requires repayment in 36 monthly installments of \$57,618, which includes interest at 7.64% per annum. As of December 31, 2008, there was \$1.0 million outstanding under this capital lease obligation.

The following table provides a summary of our debt obligations, capital lease obligations, operating lease payments, deferred compensation arrangements and certain other material purchase obligations as of December 31, 2008 for continuing operations. This table excludes other obligations that we may have, such as pension obligations.

	<u>Total</u>	<u>Less than 1 year</u>	<u>1-3 years (in millions)</u>	<u>3-5 years</u>	<u>More than 5 years</u>
Contractual cash obligations:					
Long-term debt(1)	\$373.1	\$ 18.4	\$ 229.1	\$ 125.6	\$ —
Capital lease obligations(2)	4.8	2.2	2.6	—	—
Operating leases(3)	2.9	0.9	1.5	0.5	—
Land leases	0.3	0.1	0.2	—	—
Capital expenditures/construction(4)	2.0	2.0	—	—	—
Business combinations	3.3	3.3	—	—	—
Purchase and other contractual obligations	7.6	3.7	3.5	0.3	0.1
Deferred compensation(5)	12.2	11.5	0.7	—	—
Minimum purse obligations(6)	33.6	33.6	—	—	—
Employment agreements(7)	4.9	3.6	1.3	—	—
Total	<u>\$444.7</u>	<u>\$ 79.3</u>	<u>\$ 238.9</u>	<u>\$ 126.4</u>	<u>\$ 0.1</u>

- (1) These amounts, exclusive of the interest component, are included on our consolidated balance sheets. See Note 7 to our consolidated financial statements for additional information about our debt and related matters.
- (2) The present value of these obligations, excluding interest, is included on our consolidated balance sheets.
- (3) Our operating lease obligations are described in Note 8 to our consolidated financial statements.
- (4) This amount relates principally to grooms quarters construction at Presque Isle Downs.
- (5) This amount is included on our consolidated balance sheets. See Note 8 to our consolidated financial statements for additional information about deferred compensation arrangements.
- (6) Pursuant to an agreement with the Mountaineer Park Horsemen's Benevolent and Protective Association, Inc. and/or in accordance with the West Virginia racing statute, Mountaineer is required to conduct racing for a minimum of 210 days and pay daily minimum purses of \$125,000 (\$160,000 commencing January 1, 2007) for the term of the agreement which expires on December 31, 2009.
- (7) Includes base salaries and guaranteed payments but not incentive amounts that cannot be calculated.

Capital Expenditures:

During the year ended December 31, 2008, additions to property and equipment and other capital projects for continuing operations aggregated \$12.3 million (of which \$0.5 million was financed under a capital lease). Expenditures included approximately \$2.8 million related to poker, table gaming and related renovations at Mountaineer, \$2.0 million related to surveillance equipment at Presque Isle

Table of Contents

Downs and approximately \$7.5 million for additional gaming and other equipment and miscellaneous projects. We anticipate spending up to a total of approximately \$16.7 million during 2009 on capital expenditures.

Commitments and Contingencies:

The cost of construction of North Metro, including furniture, fixtures and equipment and start-up expenses, was approximately \$62.5 million, \$42.3 million of which was separately financed through Black Diamond Commercial Finance, LLC as agent (collectively, "Black Diamond"), without recourse to us except for a \$1.0 million guarantee that we provided in July 2008. The guarantee will continue until the earlier of July 1, 2010 or prepayment of the Black Diamond credit agreement. Through December 31, 2008, we made aggregate capital contributions in North Metro of approximately \$12.8 million (exclusive of legal and other fees). Additionally, in May 2008 we provided two letters of credit in the amounts of \$238,625 (which was released in February 2009) and \$135,000 (which is expected to be released in April 2009) and a surety bond in the amount of \$250,000.

On October 19, 2008, Southwest Casino Corporation sold its 50% membership interest in North Metro to Black Diamond for (i) \$1.00; (ii) relief from a \$1 million guarantee by Southwest of North Metro's obligations; (iii) a right to repurchase the membership interest; and (iv) certain other considerations. Although we have been in discussions with Black Diamond, we have not entered into similar agreements and continue to own our 50% membership interest in North Metro. Black Diamond has requested that we make additional investments in North Metro; however under the terms of our Fifth Amended and Restated Credit Agreement, as amended, we do not have the ability to provide further financial support to North Metro. Since acquiring 50% of the venture, Black Diamond has hired a management company to run the day-to-day operations, and on March 2, 2009, removed the board seat held by MTR-Harness, Inc. from North Metro's board of directors. Our interest in North Metro is pledged to Black Diamond as collateral for the construction loan.

On October 31, 2008, the Black Diamond credit agreement was amended to provide for additional loans to North Metro of up to \$1,250,000 (with the making of such additional loans being subject to Black Diamond's sole and absolute discretion). Concurrently, Black Diamond lent North Metro an additional \$650,000, of which \$430,313 was applied to pay Black Diamond interest in arrears and of which \$219,687 was lent to North Metro for additional working capital. On November 3, 2008, Black Diamond and MTR-Harness entered into a Forbearance Agreement pursuant to which Black Diamond agreed not to enforce, until November 25, 2008, its rights under the Black Diamond credit agreement arising from the failure of North Metro to satisfy certain financial covenants, including the satisfaction of a minimum EBITDA threshold, a maximum leverage threshold, and a minimum cash requirement. On November 24, 2008, Black Diamond and MTR-Harness entered into an additional Forbearance Agreement pursuant to which Black Diamond agreed not to enforce, prior to January 19, 2009, its rights under the Black Diamond credit agreement arising from the failure of North Metro to satisfy certain financial covenants, including the satisfaction of a minimum EBITDA threshold, a maximum leverage threshold, and a minimum cash requirement. While Black Diamond has reserved all rights under the credit agreement, it has not taken any action with respect to MTR-Harness or the Company (other than the removal of MTR-Harness' board seat from North Metro's board of directors).

Based upon the current default under the Black Diamond credit agreement (subject to the above-mentioned Forbearance Agreement then in effect), Black Diamond's transaction with Southwest and our inability to provide further funding to North Metro, we determined that there is substantial doubt as to whether we can recover our investment in North Metro. Accordingly, during 2008 we recorded impairment losses in the aggregate amount of \$8.7 million (for which a tax benefit could not be recognized). In addition, because Black Diamond has not called our \$1 million guarantee in whole or in part, and given the relief provided by Black Diamond to Southwest relative to their guarantee, we do not believe that payment of the guarantee is probable at this time. Accordingly, as of December 31, 2008, we have not recorded this obligation.

Table of Contents

Jackson Harness Raceway is located on property leased from Jackson County, Michigan on the Jackson County Fairgrounds through December 31, 2012. Rentals include certain base amounts, subject to annual increases, as well as percentages of live and simulcasting parimutuel wagering handle. The minimum combined live and simulcast rental is \$85,000. We are also required to make certain capital expenditures during the course of the lease. In connection with Jackson Trotting's closure of racing and simulcast wagering operations on December 4, 2008, we accrued the remaining obligations with respect to the leases and capital expenditures, which amounted to \$0.6 million at December 31, 2008.

In connection with our original acquisition of Binion's on March 11, 2004, we obtained title to the property and equipment, free and clear of all debts, subject to increase by \$5.0 million if, at the termination of the Joint Operating License Agreement, Harrah's achieved certain operational milestones. We do not believe that Harrah's achieved the specified operational milestones and therefore did not pay the \$5 million. Legal proceedings were initiated and the parties have agreed in principal to settle this matter for \$1.75 million with payment to be made upon settlement of all other accounts between the parties. The previously established accrual of the \$5 million as additional purchase price was reduced to \$1.75 million at December 31, 2007. See Note 8 to our consolidated financial statements which are included elsewhere in this report for additional information about this matter. Also in connection with our original acquisition of Binion's, we provided limited guarantees, which reduce each month as rental payments are made on certain land leases, some of which expired in March 2008, and three of which remained in effect. One of those three (approximately \$0.6 million) expires in March 2009 and the two remaining leases (totaling approximately \$2.0 million) expire in March 2010. However, in connection with the January 2009 settlement of the post-closing purchase price adjustment with TLC Casino Enterprises, Inc., we deposited approximately \$1.5 million in an escrow account that will be used to pay a portion of these land lease obligations that have been guaranteed by the Company.

In connection with planned infrastructure improvements at Presque Isle Downs, we were required to establish an escrow deposit in 2006 for the benefit of the Pennsylvania Department of Transportation of approximately \$5 million. Approximately \$4.0 million was returned to us through 2008. At December 31, 2008, the deposit amounted to approximately \$1.0 million, which will be fully returned to us by November 2009.

Upon commencement of slot operations at Presque Isle Downs, the Pennsylvania Gaming Control Board advised Presque Isle Downs that it would receive a one time assessment of \$0.8 million required of each slot machine licensee after commencement of gaming operations. These funds are a prepayment toward the total borrowings of the Pennsylvania Gaming Control Board, Pennsylvania Department of Revenue and the Pennsylvania State Police (collectively "the borrowers"), required to fund the costs incurred as a result of gaming operations. Once all of Pennsylvania's fourteen slot machine licensees are operational, the Pennsylvania Department of Revenue will assess all licensees, including Presque Isle Downs, their proportionate share of the total borrowings incurred by the borrowers, as a result of gaming operations. The amount to be assessed to Presque Isle Downs is unknown at this time but is likely to exceed the \$0.8 million previously advanced.

We have financed development and construction costs of Presque Isle Downs and other capital expenditures with cash flow from operations, borrowings under our credit facility and cash on hand, including the remaining proceeds of our senior subordinated notes, and equipment financing arrangements. At December 31, 2008, approximately \$0.7 million of liabilities is outstanding relating to construction and development. We anticipate that this amount and our capital requirements for 2009, which are estimated to be no more than approximately \$16.7 million, will be financed with cash on hand, cash flow from operations, proceeds from the sale of non-core assets, and, to the extent necessary, availability under our credit facility (which is approximately \$5.3 million subject to mandatory scheduled commitment reductions). As previously discussed, we are currently evaluating our financing options and are in discussions with our lenders and advisors with respect to our credit facility and senior unsecured notes.

Table of Contents

We have entered into an agreement with the Summit Township Industrial and Economic Development Authority ("STIEDA") pursuant to which the Authority has agreed to apply to Erie County for certain grants contemplated by the gaming act, which would be used to fund, initially, up to \$14.4 million of agreed upon on- and off-site infrastructure improvements. STIEDA has submitted applications to Erie County for the funds subject to the agreement. However, to date such funds have not been released and STIEDA has filed litigation against Erie County to force it to make distributions to fund the submitted grant requests. Erie County had taken the position that the gaming act did not permit or require distributions to municipalities, such as Summit Township, to defray infrastructure costs incident to hosting a casino. On August 4, 2008, the Erie County Court of Common Pleas ruled in favor of STIEDA and ordered Erie County to distribute certain revenue collected from casino operations to fund proper grant requests. Specifically, the court ruled that the County, through its revenue authority must distribute "restricted funds," as defined in the Gaming Act "to fund the costs of human services, infrastructure improvements, facilities, emergency services, or health and public safety expenses associated solely with the operation of Presque Isle Downs & Casino." STIEDA submitted the grant request to the newly formed Erie County Gaming Revenue Authority ("ECGRA"), seeking reimbursement for such qualifying infrastructure improvements as roads and bridges incident to the operation of Presque Isle Downs. In March 2009, based on the ECGRA's conclusion that STIEDA's grant request did not satisfy the Court's standard, Erie County adopted an ordinance for the distribution of the restricted funds that effectively denied STIEDA's grant application. We believe that the County acted arbitrarily and in violation of the Court's August 4, 2008 order. We are currently evaluating our options with respect to further pursuit of these reimbursements.

In October 2004, we acquired 229 acres of real property, known as the International Paper site, as an alternative site to build Presque Isle Downs. In October 2005, we sold all but approximately 24 acres of this site for \$4.0 million to the Greater Erie Industrial Development Corporation, a private, not-for-profit entity that is managed by the municipality (the "GEIDC"). Although the sales agreement was subject to, among other things, our release (by International Paper Company and the Pennsylvania Department of Environmental Protection (the "PaDEP") from our obligations under the consent order (as discussed below), we waived this closing condition.

In connection with the acquisition of the International Paper site, we entered into a consent order with the PaDEP regarding a proposed environmental remediation plan for the site. The proposed plan was based upon a "baseline environmental report" and it was estimated that such remediation would cost approximately \$3.0 million. The GEIDC assumed primary responsibility for the obligations under the consent order relating to the property they acquired. The GEIDC has agreed to indemnify us from any breach by the GEIDC of its obligation under the consent order. However, we have been advised by the PaDEP that we have not been released from liability and responsibility under the consent order. The GEIDC has remediated a portion of the site and PaDEP has approved a plan for the remediation of the remainder of the site. A revised estimate of the remaining remediation costs cannot be determined at this time since such a determination will be dependent upon the remaining development activities of the GEIDC.

We have been advised by the GEIDC that the GEIDC claims that Presque Isle Downs is obligated to supply approximately 50,500 cubic yards of "clean fill dirt" for the parcel of land of the International Paper site that was previously sold to the GEIDC. Presque Isle Downs has taken the position that it has no such obligation because (i) any such agreement contained in the purchase agreement was merged into the deed delivered at the time of the sale; and (ii) the GEIDC had expressly waived this requirement.

We are faced with certain contingencies involving litigation and environmental remediation and compliance. These commitments and contingencies are discussed in greater detail in "Item 3. Legal Proceedings" and Note 8 to our consolidated financial statements, which are included elsewhere in this report.

Table of Contents*Employment, Consulting and Deferred Compensation Agreements:*

On September 19, 2008, we appointed Robert F. Griffin as the Company's new President and Chief Executive Officer and on September 23, 2008, entered into a two-year employment agreement that commenced November 1, 2008. The agreement provides for an annual base salary of \$550,000 and certain other benefits. Pursuant to the agreement, Mr. Griffin is also entitled to annual incentive compensation of no less than 30% of his base compensation. The agreement also provides for the grant of options to purchase 150,000 shares of our common stock, subject to certain vesting and other provisions. In the event of termination of employment in connection with a change of control as defined in the agreement, Mr. Griffin would receive a severance payment as follows: (i) an amount equal to two times Mr. Griffin's then applicable base compensation, (ii) an amount equal to the highest amount of annual incentive compensation paid to Mr. Griffin with respect to either the first or second full calendar year immediately preceding the effective date of the termination (or as otherwise stipulated in the agreement); and (iii) an additional monthly amount so that Mr. Griffin shall be able to receive certain health benefits coverage as provided by the agreement. The agreement also provides that upon a change in control all unvested stock options shall vest and all stock options that must be exercised shall be exercisable in accordance with the terms of the applicable Non-Qualified Stock Option Agreement.

On October 15, 2008, we entered into the second amendment of the employment agreement with Edson R. Arneault pursuant to which Mr. Arneault's employment agreement expired on October 31, 2008, instead of December 31, 2008, as originally provided, and Mr. Arneault ceased to be employed as the Company's President and Chief Executive Officer on October 31, 2008. The amendment provides that Mr. Arneault will receive the following consideration in lieu of any and all payments that would otherwise become due and payable to him under his employment agreement (except as otherwise provided in the amendment): (i) the corporate residence and associated real property and furnishings in New Cumberland, West Virginia; (ii) Mr. Arneault's office furnishings at the Company's headquarters, (iii) a bonus payment of \$400,000 less applicable taxes and authorized deductions; (iv) certain other compensation and expense reimbursement pursuant to the employment agreement through the date of termination; and (v) deferred amounts of approximately \$11.5 million held in a rabbi trust with earnings on such amounts.

On October 15, 2008, we also entered into a consulting agreement with Mr. Arneault effective November 1, 2008, and continuing for a period of 30 months during which Mr. Arneault will assist with the transition to Mr. Griffin, who became President and Chief Executive Officer on November 1, 2008, and provide other services set forth in the consulting agreement. The consulting agreement provides that Mr. Arneault will provide up to 400 hours of his time per year and we will pay Mr. Arneault a consulting fee of \$512,000 per year and also provide for the payment of certain expenses incurred by Mr. Arneault in connection with his providing services to the Company. During the 30-month period, Mr. Arneault will not, directly or indirectly, own, operate, join, control, participate in or be connected as an officer, director, employee, partner, stockholder, consultant or otherwise, any gaming business within 150 miles of any facility currently owned or leased by the Company.

On October 19, 2006, we also entered into an amendment to the deferred compensation agreement with Mr. Arneault dated as of January 1, 1999. The amendment provides that if Mr. Arneault's employment is terminated other than for cause or good reason, as defined, or if the new employment agreement expires, we will pay the premiums for insurance policies underlying the deferred compensation agreement until Mr. Arneault reaches the age of sixty-five (65). Pursuant to the terms of this agreement, we previously purchased a split-dollar life insurance policy on Mr. Arneault's life (face amount of \$4.7 million and annual premium of \$150,000). The Company is the owner and beneficiary of the policy. As a result of an amendment to the deferred compensation agreement dated May 4, 2005, we no longer have a liability to Mr. Arneault under the aforementioned agreement.

Table of Contents

We entered into various employment agreements during 2008 and 2007 with other employees. We also entered into an additional deferred compensation agreement dated June 1999 whereby we purchased life insurance on a former employee's life (aggregate face amount of \$856,000 and aggregate annual premiums of \$37,000). The Company is the owner and beneficiary of the policy. However, on March 10, 2009, the Company and the former employee agreed to rescind the agreement.

Subject to our ability to refinance, as previously discussed, our senior unsecured notes prior by January 2, 2010, or obtain an extension of the date of the required financing and correspondingly, the accelerated maturity date of amounts outstanding under our senior secured revolving credit facility, and our credit agreement by March 31, 2010, management believes that our cash balances, cash flow from operations, proceeds from the sale of non-core assets and availability under our credit facility (approximately \$5.3 million subject to mandatory scheduled commitment reductions) will be sufficient to cover any capital required to fund maturing debt obligations and any other contemplated capital expenditures and short-term funding requirements for the next twelve months. We are exploring the potential sale or disposal of our non-core assets, for which we may utilize the net proceeds from such sales to reduce amounts outstanding under our credit facility. Furthermore, any reimbursements we receive from STIEDA would also be available to reduce amounts outstanding under our credit facility.

New competition may have a material adverse effect on our revenues, and could have a similar adverse effect on our liquidity. See "Item 1A. Risk Factors—Risks Related to Our Business" which is included elsewhere in this report for a description of certain circumstances that may affect our sources of liquidity. Furthermore, if we seek to pursue additional expansion projects or acquire new properties, we would likely require additional financing.

In order to borrow additional amounts that would be subordinated to amounts under the credit agreement, we must satisfy the debt incurrence tests provided by the credit agreement, and for amounts in excess of the amended permitted debt basket and the \$10 million other permitted indebtedness basket under the indentures governing the senior unsecured notes and senior subordinated notes (subject to limitations under the credit agreement), we must either satisfy the debt incurrence tests provided by the indentures or obtain the prior consents of the holders of at least a majority in aggregate principal amount of those notes that are not owned by the Company or any of its affiliates. Currently, our borrowings under the credit facility are limited to a total of \$107.3 million, subject to further mandatory scheduled commitment reductions of 2.5% per quarter that commenced December 22, 2008 through September 22, 2009, and 5% for the quarter ending December 31, 2009.

Our level of indebtedness and our working capital present other risks to investors, including the possibility that we may be unable to generate cash sufficient to pay the principal of and interest on our indebtedness when due; and that we may not be able to meet tests and covenants of such debt agreements and achieve satisfactory resolution of such non-compliance with the lenders. In such an event, the holders of our indebtedness may be able to declare all indebtedness owing to them to be due and payable immediately, and proceed against any collateral securing such indebtedness. These actions could limit our ability to borrow additional funds and would likely have a material adverse effect on our business and results of operations. In June 2008, Moody's Investor Service downgraded the Company's credit rating, and in August 2008, Standard & Poor's also downgraded the Company's credit rating. The debt rating downgrades do not impact the terms of borrowings under our senior secured revolving credit facility, the senior unsecured notes or the senior subordinated notes. However, a further debt rating downgrade could impact the terms of and our ability to refinance existing debt or to obtain new financing, particularly in light of the downturn in the national and worldwide economies and the current state of the credit markets. Additionally, changes in the regulatory environment or restriction on or prohibition of our gaming or racing operations, whether arising out of legislation or litigation, could have a material adverse effect on our liquidity. See "Item 1A. Risk Factors—Risks Related to Our Business" which is included elsewhere in this report.

Table of Contents

We also cannot assure you that estimates of our liquidity needs are accurate or that new business developments or other unforeseen events will not occur, resulting in the need to raise additional funds and increased difficulties with respect to our ability to raise such funds. See "Item 1A. Risk Factors—Risks Related to Our Business" which is included elsewhere in this report.

Regulation and Taxes:

We are subject to extensive regulation by the State of West Virginia Racing and Lottery Commissions, the Pennsylvania Racing Commission and Gaming Authorities and the Ohio Racing Commission. Change in applicable laws or regulations could have a significant impact on our operations.

The gaming industry represents a significant source of tax revenues, particularly to the States of West Virginia and Pennsylvania and their counties and municipalities. We pay substantial taxes and fees with respect to our operations. From time to time, federal, state and local legislators and officials have proposed changes in tax laws, or in the administration of such laws, affecting the gaming and racing industry. Changes in the tax laws or administration of those laws, if adopted, could have a material adverse effect on our business, financial condition and results of operations. However, it is not possible to determine with certainty the likelihood of changes in tax laws or in the administration of such laws. We believe that recorded tax balances are adequate.

Outstanding Options:

On May 15, 2008, the Compensation Committee of our Board of Directors granted to one employee options to purchase a total of 30,000 shares of our common stock at a purchase price of \$5.61 per share, the NASDAQ Official Close Price on that date. The options have a term of ten years and were fully vested on date of grant.

On September 19, 2008, the Compensation Committee of our Board of Directors granted, in connection with execution of an employment agreement, options to purchase a total of 150,000 shares of our common stock at a purchase price of \$3.71, the NASDAQ Official Close Price on that date. The options have a term of ten years, 50,000 of which vested on date of grant and 50,000 of which vest on each of the first and second anniversary dates of the employment agreement, which was effective November 1, 2008.

As of March 13, 2009, there were outstanding options to purchase 1,483,800 shares of our common stock. If all such stock options were exercised, we would receive proceeds of approximately \$11.5 million. We utilize the treasury stock method in determining the dilutive effect of outstanding stock options. Our basic earnings per share is computed as net income available to common shareholders divided by the weighted average number of common shares outstanding during the year. Diluted earnings per share reflects the potential dilution that could occur from common shares issuable through stock options and other convertible securities utilizing the treasury stock method. Diluted earnings per share is calculated by using the weighted average number of common shares outstanding adjusted to include the potentially dilutive effect of these occurrences.

Critical Accounting Policies

Our significant accounting policies are included in Note 2 to our consolidated financial statements which are included elsewhere in this report. These policies, along with the underlying assumptions and judgments made by our management in their application, have a significant impact on our consolidated financial statements.

Revenue Recognition. Gaming revenues consist of the net win from gaming activities, which is the difference between amounts wagered and amounts paid to winning patrons, and is recognized at the

Table of Contents

time wagers are made net of winning payouts to patrons. Parimutuel commissions consist of commissions earned from thoroughbred and harness racing, and importing of simulcast signals from other race tracks. Parimutuel commissions are recognized at the time wagers are made. Such commissions are a designated portion of the wagering handle as determined by state racing commissions, and are shown net of the taxes assessed by state and local agencies, as well as purses and other contractual amounts paid to horsemen associations. We recognize revenues from fees earned through the exporting of simulcast signals to other race tracks at the time wagers are made. Such fees are based upon a predetermined percentage of handle as contracted with the other race tracks. Revenues from food and beverage are recognized at the time of sale and revenues from lodging are recognized on the date of stay. Other revenues are recorded at the time services are rendered or sales are completed. Lodging, food and beverage gratuitously provided to customers are not recognized as revenues.

Impairment of Long-Lived Assets and Intangibles. In accordance with *Statement of Financial Accounting Standards ("SFAS") No. 142, Goodwill and Other Intangible Assets ("SFAS 142")*, we reviewed the carrying value of our long-lived assets (including goodwill) whenever events or changes in circumstances indicate that such carrying values may not be recoverable annually. Unforeseen events, changes in circumstances and market conditions and material differences in estimates of future cash flows could negatively affect the fair value of our assets and result in an impairment charge. Fair value is the amount at which the asset could be bought or sold in a current transaction between willing parties. Fair value can be estimated utilizing a number of techniques including quoted market prices, prices for comparable assets, or other valuation processes involving estimates of cash flows, multiples of earnings or revenues. During 2008, we performed the annual impairment tests of goodwill and indefinite-lived intangible assets. As a result of these tests, we determined that there was no impairment of goodwill or indefinite-lived intangible assets, other than that related to Jackson Harness Raceway, as discussed previously.

Frequent Players Program. We offer programs whereby our participating patrons can accumulate points for wagering that can be redeemed for lodging, food and beverage, merchandise and cash. Based upon the historical point redemptions of frequent player program points, we record an estimated liability for the redemption of earned but unredeemed points. This liability can be impacted by changes in the programs, increases in membership and changes in the redemption patterns of our participating patrons. In late June 2008, we implemented a single frequent player's reward program for use at both Mountaineer and Presque Isle Downs.

Income Taxes. We account for our income taxes in accordance with SFAS 109, *Accounting for Income Taxes* ("SFAS 109"). Under SFAS 109, an asset and liability method is used whereby deferred tax assets and liabilities are determined based upon temporary differences between bases used for financial reporting and income taxes reporting purposes. Income taxes are provided based on the enacted tax rates in effect at the time such temporary differences are expected to reverse. A valuation allowance, when determined to be necessary, is provided for certain deferred tax assets if it is more likely than not that we will not realize tax assets through future operations. The Company and its subsidiaries file a consolidated federal income tax return. We are no longer subject to federal and state income tax examinations for years before 2005.

Effective January 1, 2007, we adopted Financial Accounting Standards Board ("FASB") issued Interpretation No. 48, *Accounting for Uncertainty in Tax Positions—an Interpretation of SFAS No. 109* ("FIN 48"). FIN 48 clarifies the accounting for income taxes by prescribing the minimum recognition threshold an uncertain tax position is required to meet before tax benefits associated with such uncertain tax positions are recognized in the financial statements. FIN 48 also provides guidance on derecognition, measurement, classification, interest and penalties, accounting in interim periods, disclosure and transition. FIN 48 also requires that amounts recognized in the balance sheet related to

Table of Contents

uncertain tax positions be classified as a current or noncurrent liability, based upon the expected timing of the payment to a taxing authority. The cumulative effect of adopting FIN 48 increased total assets by \$582,000 and total liabilities by \$986,000, and decreased total shareholders' equity by \$404,000.

Stock-Based Compensation. We account for stock-based compensation in accordance with SFAS 23(R), *Share-Based Payment* ("SFAS 123(R)"), which is a revision of SFAS No. 123, *Accounting for Stock-Based Compensation*. SFAS 123(R) requires all share-based payments to employees, including grants of employee stock options, to be recognized in the consolidated statement of operations based on their fair values and that compensation expense be recognized for awards over the requisite service period of the award or to an employee's eligible retirement date, if earlier. SFAS 123(R) also requires the benefits of tax deductions in excess of recognized compensation cost to be reported as a financing cash flow, rather than as an operating cash flow as required under current literature.

Fair Value Measurements. In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements* ("SFAS 157"). The statement provides guidance for measuring the fair value of assets and liabilities and requires expanded disclosures about fair value measurements. SFAS 157 indicates that fair value should be determined based on the assumptions marketplace participants would use in pricing the asset or liability and provides additional guidelines to consider in determining the market-based measurement. In February 2008, the FASB delayed the effective date of SFAS 157 until January 1, 2009 for all non-financial assets and non-financial liabilities, except those that are recognized or disclosed at least annually. We adopted SFAS 157 on January 1, 2008 for financial assets and financial liabilities, and there was no impact from the adoption of SFAS 157 to our consolidated financial statements. We do not expect the adoption of SFAS 157 for non-financial assets and liabilities to have a material impact on our consolidated financial statements.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

We are exposed to changes in interest rates primarily from our variable rate long-term debt arrangements. However, with the issuance of the fixed rate senior unsecured notes in March 2003 and senior subordinated notes in May 2006, our exposure to interest rate changes will be limited to amounts which may be outstanding under the \$125 million Fifth Amended and Restated Credit Agreement, as amended, subject to mandatory scheduled commitment reductions (See "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—*Liquidity and Sources of Capital*" which is included elsewhere in this report).

Depending upon the amounts outstanding under the Fifth Amended and Restated Credit Agreement, as amended, a hypothetical 100 basis point (1%) change in interest rates would result in an annual interest expense change of up to approximately \$1,019,000.

At December 31, 2008, the fair value of our senior secured revolving credit facility and other long-term debt approximates the carrying value, except for our \$130 million senior unsecured notes and \$125 million senior subordinated notes for which the fair value was determined based upon market quotes. The aggregate fair value of the senior unsecured notes and senior subordinated notes was \$166.5 million at December 31, 2008.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.

The consolidated financial statements and accompanying footnotes are set forth on pages F-1 through F-41 of this report.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE.

None.

Table of Contents**ITEM 9A. CONTROLS AND PROCEDURES.****Evaluation of Disclosure Controls and Procedures**

We have established and maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports that we file under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), is recorded, processed, summarized, evaluated and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission, and that such information is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Our Chief Executive Officer and Chief Financial Officer evaluated the effectiveness of our disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) as of December 31, 2008. They have concluded that our disclosure controls and procedures are effective to ensure that the information required to be disclosed by us in the reports that we file under the Securities Exchange Act of 1934 is recorded, processed, summarized, evaluated and reported within the time periods specified in SEC rules and forms.

In connection with management's assessment of the Company's internal controls over financial reporting as of December 31, 2007, as discussed in Item 9A of the Form 10-K for the year ended December 31, 2007, management identified a material weakness in controls related to the Company's consolidated financial statement close process specific to not preparing its consolidated financial statements in a timely manner. Management believes the necessary steps have been implemented to refine the operation of internal controls at certain stages of the financial statement close process, including the monthly close of significant operating subsidiaries and preparation of certain consolidated financial statement information, and that the material weakness discussed in Management's Report on Internal Control in the Form 10-K for the year ended December 31, 2007, has been remediated during the completion of our financial statement close process for the year ended December 31, 2008.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Exchange Act Rule 13a-15(f)). There are inherent limitations in the effectiveness of any internal control over financial reporting, including the possibility of human error and the circumvention or overriding of controls. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies and procedures may deteriorate. Accordingly, our internal controls over financial reporting is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

Management conducted an evaluation and assessed the effectiveness of our internal control over financial reporting as of December 31, 2008, based upon the framework in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on our evaluation and assessment, our management concluded that our internal control over financial reporting was effective as of December 31, 2008, to provide reasonable assurance regarding reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

Table of Contents

Ernst & Young LLP, the independent registered public accounting firm that audited the Company's consolidated financial statements, has issued an attestation report on the Company's internal control over financial reporting. Ernst & Young's attestation report on the Company's internal control over financial reporting is included in this report.

Changes in Internal Controls

Except for the final remediation of the material weakness identified as of December 31, 2007, there were no significant changes in our internal control over financial reporting that occurred during the last fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Table of Contents**REPORT of INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors and Shareholders
MTR Gaming Group, Inc. and Subsidiaries

We have audited MTR Gaming Group, Inc.'s internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO criteria). MTR Gaming Group, Inc.'s management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control Over Financial Reporting and appearing in the accompanying Item 9A Controls and Procedures. Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, MTR Gaming Group, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2008, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of MTR Gaming Group, Inc. as of December 31, 2008 and 2007 and the related consolidated statements of operations, shareholders' equity and cash flows for each of the three years in the period ended December 31, 2008 of MTR Gaming Group, Inc. and our report dated March 16, 2009 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

Pittsburgh, Pennsylvania
March 16, 2009

Table of Contents

ITEM 9B. OTHER INFORMATION

None.

61

Table of Contents**PART III****ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE.**

The information required by this Item will be set forth in our definitive Proxy Statement for our 2009 Annual Meeting of Stockholders (our "Proxy Statement") or Form 10-K/A to be filed with the Securities and Exchange Commission no later than April 30, 2009, and is incorporated herein by reference.

We have adopted a code of ethics and business conduct applicable to all directors and employees, including the chief executive officer, chief financial officer and chief accounting officer. The code of ethics and business conduct is posted on our website, <http://www.mtrgaming.com> (accessible through the "Corporate Governance" caption of the Investor Relations page) and a printed copy will be delivered on request by writing to the corporate secretary at MTR Gaming Group, Inc., c/o corporate secretary, P.O. 358, Chester, West Virginia, 26034. We intend to satisfy the disclosure requirement regarding certain amendments to, or waivers from, provisions of its code of ethics and business conduct by posting such information on our website.

ITEM 11. EXECUTIVE COMPENSATION.

The information required by this Item will be set forth in our Proxy Statement or Form 10-K/A to be filed with the Securities and Exchange Commission no later than April 30, 2009, and is incorporated herein by reference.

ITEM 12. STOCK OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS.

The information required by this Item will be set forth in our Proxy Statement or Form 10-K/A to be filed with the Securities and Exchange Commission no later than April 30, 2009, and is incorporated herein by reference.

ITEM 13. CERTAIN RELATIONSHIPS, RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE.

The information required by this Item will be set forth in our Proxy Statement or Form 10-K/A to be filed with the Securities and Exchange Commission no later than April 30, 2009, and is incorporated herein by reference.

ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES.

The information required by this Item will be set forth in our Proxy Statement or Form 10-K/A to be filed with the Securities and Exchange Commission no later than April 30, 2009, and is incorporated herein by reference.

Table of Contents**PART IV****ITEM 15. EXHIBITS AND FINANCIAL SCHEDULES.**

(a) Financial Statements (Included in Part II of this report):

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRMErnst & Young LLPF-2**CONSOLIDATED FINANCIAL STATEMENTS**Consolidated Balance Sheets as of December 31, 2008 and 2007F-3Consolidated Statements of Operations for the years ended December 31, 2008, 2007 and 2006F-4Consolidated Statements of Shareholders' Equity for the years ended December 31, 2008, 2007 and 2006F-5Consolidated Statements of Cash Flows for the years ended December 31, 2008, 2007 and 2006F-6**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**F-7

(b) Financial Statements Schedules (Included in Part IV of this report):

Schedule II—Valuation Allowances for the years ended December 31, 2008, 2007, and 2006.

All other schedules for which provision is made in the applicable accounting regulations of the Securities and Exchange Commission are not required under the related instructions or are inapplicable and therefore have been omitted.

(c) Exhibits:

EXHIBIT NO.	ITEM TITLE
3.1	Restated Certificate of Incorporation for Winner's Entertainment, Inc. dated August, 17, 1993 (incorporated by reference to our Form 10-K for the fiscal year ended December 31, 1993).
3.2	Amended By Laws (filed herewith).
3.3	Certificate of Amendment of Restated Certificate of Incorporation of Winner's Entertainment, Inc. dated October 10, 1996 (incorporated by reference to our report on Form 8-K filed November 1, 1996).
4.1	Excerpt from Common Stock Certificates (incorporated by reference to our report on Form 10-K filed March 30, 2001).
4.2	Indenture dated March 25, 2003 entered into by the Company, the Guarantors (as defined in the Indenture) and Wells Fargo Bank Minnesota, National Association, as Trustee [exhibits and annexes omitted] (incorporated by reference to our report on Form 10-K filed March 31, 2003).
4.3	Supplemental Indenture dated as of July 31, 2003 by and between Scioto Downs, Inc., as Additional Guarantor, and Wells Fargo Bank Minnesota, N.A., as Trustee (incorporated by reference to Exhibit 4.3 of our registration statement on Form S-4 (Amendment No. 1), filed August 6, 2003 (Registration No. 333-105528)).
4.4	Supplemental Indenture dated as of April 23, 2004, by and between Speakeasy Gaming of Fremont, Inc., as Additional Guarantor, and Wells Fargo Bank, N.A., as Trustee (incorporated by reference to our report on Form 10-Q for the quarter ended March 31, 2004).

Table of Contents

EXHIBIT NO.	ITEM TITLE
4.5	Supplemental Indenture dated as of January 11, 2006 by and between Jackson Racing, Inc., as Additional Guarantor, and Wells Fargo Bank, N.A., as Trustee (incorporated by reference to our report on Form 10-K filed March 29, 2006).
4.6	Supplemental Indenture dated May 12, 2006, by and between the Company, certain of its wholly-owned subsidiaries (as guarantors), and Wells Fargo Bank, N.A. (incorporated by reference to our report on Form 10-Q for the quarter ended June 30, 2006).
4.7	Supplemental Indenture dated May 17, 2006, by and between the Company, certain of its wholly-owned subsidiaries (as guarantors) and Wells Fargo Bank, N.A. (incorporated by reference to our report on Form 10-Q for the quarter ended June 30, 2006).
4.8	Indenture dated May 25, 2006, by and between the Company, certain of its wholly-owned subsidiaries (as guarantors) and Wells Fargo Bank, N.A., including forms of the Note and the Guarantee (incorporated by reference to our report on Form 8-K filed May 26, 2006).
4.9	Supplemental Indenture to Indenture dated March 25, 2003 by and among the Company, certain wholly-owned subsidiaries of the Company (as Guarantors) and Wells Fargo Bank, N.A. (as Trustee) dated June 1, 2007 (incorporated by reference to our report on Form 8-K filed June 4, 2007).
4.10	Supplemental Indenture to Indenture dated May 25, 2006 by and among the Company, certain wholly-owned subsidiaries of the Company (as Guarantors) and Wells Fargo Bank, N.A. (as Trustee) dated June 1, 2007 (incorporated by reference to our report on Form 8-K filed June 4, 2007).
4.11	Supplemental Indenture dated June 15, 2007, by and between the Company, certain of its wholly-owned subsidiaries (as guarantors) and Wells Fargo Bank, N.A. supplementing the Indenture dated as of March 25, 2003 (incorporated by reference to our report on Form 8-K filed June 18, 2007).
4.12	Supplemental Indenture dated June 15, 2007, by and between the Company, certain of its wholly-owned subsidiaries (as guarantors) and Wells Fargo Bank, N.A. supplementing the Indenture dated as of May 25, 2006 (incorporated by reference to our report on Form 8-K filed June 18, 2007).
4.13	Supplemental Indenture dated March 7, 2008, by and between the Company, certain of its wholly-owned subsidiaries (as guarantors) and Wells Fargo Bank, N.A. supplementing the Indenture dated as of March 25, 2003 (incorporated by reference to our report on Form 10-K filed April 13, 2008).
4.14	Supplemental Indenture dated March 7, 2008, by and between the Company, certain of its wholly-owned subsidiaries (as guarantors) and Wells Fargo Bank, N.A. supplementing the Indenture dated as of May 25, 2006 (incorporated by reference to our report on Form 10-K filed April 13, 2008).
4.15	Instrument of Resignation, Appointment and Acceptance dated as of June 26, 2008, executed by the Company, Wells Fargo Bank, National Association, and Wilmington Trust Company (incorporated by reference to our report on Form 10-Q filed August 8, 2008).
10.1	MTR Gaming Group, Inc. 2002 Employee Stock Incentive Plan (incorporated by reference to our report on Form 10-Q for the quarter ended September 30, 2002).
10.2	Agreement dated November 1, 2008 between Mountaineer Park, Inc. and Racetrack Employees Union Local No. 101 [Schedules omitted] (filed herewith).

Table of Contents

EXHIBIT NO.	ITEM TITLE
10.3	Member Control Agreement of North Metro Harness Initiative, LLC dated as of June 8, 2004 by and among Southwest Casino and Hotel Corp., MTR-Harness, LLC, and MTR Gaming Group, Inc. (incorporated by reference to our report on Form 10-Q for the quarter ended June 30, 2004).
10.4	2004 Stock Incentive Plan (Incorporated by reference to our Proxy Statement filed June 18, 2004).
10.5	2005 Stock Incentive Plan (incorporated by reference to our Proxy Statement filed June 17, 2005).
10.6	Universal Lease Agreement dated December 5, 2005 by and between Jackson Trotting Association, LLC and Jackson County Fairgrounds (incorporated by reference to our report on Form 10-K for the year ended December 31, 2005).
10.7	Employment Agreement dated October 19, 2006, by and between the Company and Edson R. Arneault (incorporated by reference to our report on Form 8-K filed October 24, 2006).
10.8	First Amendment to Employment Agreement dated as of August 28, 2008, by and between the Company and Edson R. Arneault (filed herewith).
10.9	Second Amendment to Employment Agreement dated as of October 15, 2008, by and between the Company and Edson R. Arneault (filed herewith).
10.10	Consulting Agreement dated as of October 15, 2008, by and between the Company and Edson R. Arneault (filed herewith).
10.11	Second Amendment to Deferred Compensation Agreement dated October 19, 2006, by and between the Company and Edson R. Arneault (incorporated by reference to our report on Form 8-K filed October 24, 2006).
10.12	Agreement dated December 16, 2006 by and between Mountaineer Park, Inc. and Mountaineer Park Horsemen's Benevolent and Protective Association, Inc. (incorporated by reference to our report on Form 10-K filed April 2, 2007).
10.13	Agreement dated February 22, 2007 by and between Presque Isle Downs, Inc. and the Pennsylvania Horsemen's Benevolent and Protective Association Inc. (incorporated by reference to our report on Form 10-K filed April 2, 2007).
10.14	Fifth Amended and Restated Credit Agreement dated September 22, 2006, by and among the Registrant, Mountaineer Park, Inc., Speakeasy Gaming of Las Vegas, Inc., Speakeasy Gaming of Fremont, Inc., Presque Isle Downs, Inc. and Scioto Downs, Inc. (each a wholly-owned subsidiary of the Registrant), and Wells Fargo Bank, National Association (incorporated by reference to our report on Form 8-K filed September 27, 2006).
10.15	First Amendment to Fifth Amended and Restated Credit Agreement dated June 19, 2007, by and among the Company, Mountaineer Park, Inc., Speakeasy Gaming of Las Vegas, Inc., Speakeasy Gaming of Fremont, Inc., Presque Isle Downs, Inc. and Scioto Downs, Inc. (each a wholly-owned subsidiary of the Company), and Wells Fargo Bank, National Association (incorporated by reference to our report on Form 8-K filed June 22, 2007).

Table of Contents

EXHIBIT NO.	ITEM TITLE
10.16	Second Amendment to Fifth Amended and Restated Credit Agreement dated March 31, 2008 by and among the Registrant, Mountaineer Park, Inc., Speakeasy Gaming of Las Vegas, Inc., Presque Isle Downs, Inc. and Scioto Downs, Inc. (each a wholly-owned subsidiary of the Registrant), and Wells Fargo Bank, National Association (incorporated by reference to our report on Form 10-K filed April 13, 2008).
10.17	Fourth Amendment to Fifth Amended and Restated Credit Agreement dated December 19, 2008, by and among the Registrant, Mountaineer Park, Inc., Speakeasy Gaming of Las Vegas, Inc., Presque Isle Downs, Inc., and Scioto Downs, Inc. (each a wholly-owned subsidiary of the Registrant), and Wells Fargo Bank, National Association (incorporated by reference to our report on Form 10-K filed December 19, 2008).
10.18	Revolving Credit Note dated March 31, 2008, executed by the Company, Mountaineer Park, Inc., Speakeasy Gaming of Las Vegas, Inc., Presque Isle Downs, Inc. and Scioto Downs, Inc. (incorporated by reference to our report on Form 10-K filed April 3, 2008).
10.19	Stock Purchase Agreement dated June 26, 2007, by and between the Company and TLC Casino Enterprises, Inc. (incorporated by reference to our report on Form 8-K filed June 18, 2007).
10.20	Employment Agreement dated August 15, 2007, executed by the Company and John W. Bittner, Jr. (incorporated by reference to our report on Form 10-Q for the quarter ended September 30, 2007).
10.21	Amendment to Employment Agreement dated September 8, 2008, by and between the Company and John W. Bittner, Jr. (filed herewith).
10.22	Employment Agreement dated August 15, 2007, executed by the Company and Patrick J. Arneault (incorporated by reference to our report on Form 10-Q for the quarter ended September 30, 2007).
10.23	Amendment to Employment Agreement dated September 8, 2008 by and between the Company and Patrick J. Arneault (filed herewith).
10.24	2007 Stock Incentive Plan (incorporated by reference to our Proxy Statement filed April 30, 2007).
10.25	Asset Purchase and Sale Agreement dated January 11, 2008, by and between the Company and Lucky Lucy D LLC (incorporated by reference to our report on Form 8-K filed January 15, 2008).
10.26	Real Property Purchase and Sale Agreement dated January 11, 2008, by and between the Company and Ganaste LLC (incorporated by reference to our report on Form 8-K filed January 15, 2008).
10.27	Master Lease dated January 11, 2008, by and between Company and Ganaste LLC (incorporated by reference to our report on Form 8-K filed January 15, 2008).
10.28	Termination Agreement dated January 11, 2008, by and between Company and Ganaste LLC (incorporated by reference to our report on Form 8-K filed January 15, 2008).
10.29	Amendment dated February 29, 2008, to Stock Purchase Agreement dated June 26, 2007, by and among the Company and TLC Casino Enterprises, Inc. (incorporated by reference to our report on Form 8-K filed March 6, 2008).

Table of Contents

EXHIBIT NO.	ITEM TITLE
10.30	Employment Agreement dated May 15, 2008, by and between the Company and David R. Hughes (incorporated by reference to our report on Form 10-Q filed on August 8, 2008).
10.31	Amendment to Employment Agreement dated October 16, 2008, by and between the Company and David R. Hughes (filed herewith).
14.1	Code of Ethics and Business Conduct of the Company (incorporated by reference to our report on Form 10-K for the year ended December 31, 2003).
14.2	Amendment to the Company's Code of Ethics and Business Conduct (incorporated by reference to our report on Form 8-K filed April 24, 2007).
21.1	Subsidiaries of the Registrant (filed herewith).
23.1	Consent of Ernst & Young LLP (filed herewith).
31.1	Certification of Robert F. Griffin pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (filed herewith).
31.2	Certification of David R. Hughes pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (filed herewith).
32.1	Certification of Robert F. Griffin in accordance with 18 U.S.C. Section 1350 (filed herewith).
32.2	Certification of David R. Hughes in accordance with 18 U.S.C. Section 1350 (filed herewith).

Table of Contents**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Company has caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

MTR GAMING GROUP, INC.

By: /s/ ROBERT F. GRIFFIN

Robert F. Griffin
President and Chief Executive Officer

Date: March 16, 2009

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Company and in the capacities and on the date indicated.

<u>Signature</u>	<u>Capacity</u>	
<u>/s/ ROBERT F. GRIFFIN</u> Robert F. Griffin	President and Chief Executive Officer	March 16, 2009
<u>/s/ JEFFREY P. JACOBS</u> Jeffrey P. Jacobs	Chairman	March 16, 2009
<u>/s/ ROBERT A. BLATT</u> Robert A. Blatt	Director	March 16, 2009
<u>/s/ JAMES V. STANTON</u> James V. Stanton	Director	March 16, 2009
<u>/s/ DONALD J. DUFFY</u> Donald J. Duffy	Director	March 16, 2009
<u>/s/ LC GREENWOOD</u> LC Greenwood	Director	March 16, 2009
<u>/s/ RICHARD DELATORE</u> Richard Delatore	Director	March 16, 2009

Table of Contents

<u>Signature</u>	<u>Capacity</u>	
<u>/s/ RAYMOND K. LEE</u> Raymond K. Lee	Director	March 16, 2009
<u>/s/ STEVEN M. BILLICK</u> Steven M. Billick	Director	March 16, 2009
<u>/s/ STANLEY R. GOROM III</u> Stanley R. Gorom III	Director	March 16, 2009
<u>/s/ DAVID R. HUGHES</u> David R. Hughes	Corporate Executive Vice President and Chief Financial Officer	March 16, 2009
<u>/s/ JOHN W. BITTNER, JR.</u> John W. Bittner, Jr.	Executive Vice President of Finance and Accounting	March 16, 2009
<u>/s/ KENNETH P. ZERN</u> Kenneth P. Zern	Chief Accounting Officer	March 16, 2009

Table of Contents

**MTR GAMING GROUP, INC.
INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**

<u>Report of Independent Registered Public Accounting Firm (Ernst & Young LLP)</u>	<u>F-2</u>
<u>Consolidated Financial Statements</u>	
<u>Consolidated Balance Sheets as of December 31, 2008 and 2007</u>	<u>F-3</u>
<u>Consolidated Statements of Operations for the years ended December 31, 2008, 2007 and 2006</u>	<u>F-4</u>
<u>Consolidated Statements of Shareholders' Equity for the years ended December 31, 2008, 2007 and 2006</u>	<u>F-5</u>
<u>Consolidated Statements of Cash Flows for the years ended December 31, 2008, 2007 and 2006</u>	<u>F-6</u>
<u>Notes to Consolidated Financial Statements</u>	<u>F-7</u>

F-1

Table of Contents**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Board of Directors and Shareholders
MTR Gaming Group, Inc. and Subsidiaries

We have audited the accompanying consolidated balance sheets of MTR Gaming Group, Inc. as of December 31, 2008 and 2007, and the related consolidated statements of operations, shareholders' equity, and cash flows for each of the three years in the period ended December 31, 2008. Our audits also included the financial statement schedule listed in the Index at Item 15. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of MTR Gaming Group, Inc. at December 31, 2008 and 2007, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 2008, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

As discussed in Note 2 to the consolidated financial statements, the Company adopted the provisions of FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109*, effective January 1, 2007.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of MTR Gaming Group, Inc.'s internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 16, 2009 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

Pittsburgh, Pennsylvania
March 16, 2009

F-2

Table of Contents**MTR GAMING GROUP, INC.****CONSOLIDATED BALANCE SHEETS**

(dollars in thousands, except per share amounts)

	December 31,	
	2008	2007
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 29,011	\$ 31,045
Restricted cash	929	560
Accounts receivable, net of allowance for doubtful accounts of \$125 in 2008 and \$92 in 2007	7,717	10,050
Inventories	4,445	4,407
Deferred financing costs	4,444	3,203
Prepaid income taxes	7,059	851
Deferred income taxes	1,397	1,427
Prepaid expenses and other current assets	4,528	5,089
Assets held for deferred compensation	11,529	—
Assets of discontinued operations	36	18
Assets held for sale	—	3,290
Total current assets	71,095	59,940
Property and equipment, net	367,769	388,772
Goodwill	1,985	2,145
Other intangibles	68,819	69,043
Deferred financing costs, net of current portion	2,499	8,123
Equity method investment	—	11,609
Deposits and other	14,815	25,748
Assets of discontinued operations	728	3,292
Assets held for sale	—	42,648
Total assets	<u>\$527,710</u>	<u>\$611,320</u>
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 6,874	\$ 8,835
Accounts payable—gaming taxes and assessments	6,848	9,446
Accrued payroll and payroll taxes	3,220	4,718
Accrued interest	4,933	6,456
Other accrued liabilities	14,680	11,575
Construction project liabilities	1,048	4,225
Deferred compensation	11,547	—
Current portion of long-term debt and capital lease obligations	20,498	11,008
Liabilities of discontinued operations	1,040	447
Liabilities held for sale	—	4,881
Total current liabilities	70,688	61,591
Long-term debt and capital lease obligations, net of current portion	357,112	420,520
Long-term deferred compensation	663	10,545
Deferred income taxes	3,644	896
Liabilities of discontinued operations	—	43
Liabilities held for sale	—	5,273
Total liabilities	432,107	498,868
Minority interest of discontinued operations	202	305
Commitments and contingencies	—	—
Shareholders' equity:		
Common stock, \$.00001 par value; 50,000,000 shares authorized; 27,475,260 shares issued and outstanding at December 31, 2008 and 2007	—	—
Additional paid-in capital	61,774	60,478
Retained earnings	34,013	51,724
Accumulated other comprehensive loss	(386)	(55)
Total shareholders' equity	95,401	112,147
Total liabilities and shareholders' equity	<u>\$527,710</u>	<u>\$611,320</u>

See accompanying summary of accounting policies and notes to consolidated financial statements.

Table of Contents**MTR GAMING GROUP, INC.****CONSOLIDATED STATEMENTS OF OPERATIONS**

(dollars in thousands, except per share amounts)

	Years Ended December 31,		
	2008	2007	2006
Revenues:			
Gaming	\$ 418,055	\$ 370,956	\$ 259,098
Parimutuel commissions	14,449	13,321	12,988
Food, beverage and lodging	35,963	29,449	22,320
Other	10,305	8,088	7,806
Total revenues	478,772	421,814	302,212
Less promotional allowances	(7,921)	(5,968)	(4,432)
Net revenues	470,851	415,846	297,780
Operating expenses:			
Costs of operating departments:			
Gaming	265,115	232,487	156,472
Parimutuel commissions	14,170	11,666	10,045
Food, beverage and lodging	28,767	25,228	15,595
Other	8,799	7,099	7,210
Marketing and promotions	15,864	17,621	8,719
General and administrative	67,176	61,663	48,145
Depreciation	29,839	27,793	20,101
Loss on disposal of property, net	2,956	133	245
Project opening costs	—	5,578	2,268
Total operating expenses	432,686	389,268	268,800
Operating income	38,165	26,578	28,980
Other (expense) income:			
Equity in loss of unconsolidated joint venture (including impairment loss of \$8,750 in 2008)	(12,300)	(234)	—
Interest income	244	398	1,960
Interest expense	(40,764)	(34,774)	(17,047)
Loss on debt modification	(3,820)	—	—
(Loss) income from continuing operations before income taxes and minority interest	(18,475)	(8,032)	13,893
Benefit (provision) for income taxes	3,197	2,020	(6,656)
(Loss) income from continuing operations before minority interest	(15,278)	(6,012)	7,237
Minority interest	—	144	170
(Loss) income from continuing operations	(15,278)	(5,868)	7,407
Discontinued operations:			
Loss from discontinued operations before income taxes	(3,861)	(8,457)	(4,514)
Benefit for income taxes	1,428	2,966	1,553
Loss from discontinued operations	(2,433)	(5,491)	(2,961)
Net (loss) income	\$ (17,711)	\$ (11,359)	4,446
Net (loss) income per share—basic:			
Continuing operations	\$ (0.56)	\$ (0.21)	\$ 0.27
Discontinued operations	(0.09)	(0.20)	(0.11)
Basic net (loss) income per share	\$ (0.65)	\$ (0.41)	\$ 0.16
Net (loss) income per share—diluted:			
Continuing operations	\$ (0.56)	\$ (0.21)	\$ 0.27
Discontinued operations	(0.09)	(0.20)	(0.11)
Diluted net (loss) income per share	\$ (0.65)	\$ (0.41)	\$ 0.16
Weighted average number of shares outstanding:			
Basic	27,475,260	27,537,785	27,483,392
Diluted	27,475,260	27,537,785	27,764,688

See accompanying summary of accounting policies and notes to consolidated financial statements.

Table of Contents**MTR GAMING GROUP, INC.****CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY**

(dollars in thousands)

	<u>Common Stock</u>		<u>Additional</u>	<u>Retained</u>	<u>Accumulated</u>	
	<u>Shares</u>	<u>Amount</u>	<u>Paid-In</u>	<u>Earnings</u>	<u>Other</u>	<u>Total</u>
			<u>Capital</u>		<u>Comprehensive</u>	
					<u>Loss</u>	
Balances, January 1, 2006	27,444,676	\$ —	\$ 61,376	\$ 59,600	\$ —	\$120,976
Net income	—	—	—	4,446	—	4,446
Pension other comprehensive loss, net of tax of \$25	—	—	—	—	(47)	(47)
Comprehensive income						4,399
Shares issued from exercise of stock options, including excess tax benefits of \$79	60,850	—	488	—	—	488
Stock-based compensation	—	—	157	—	—	157
Stock option (162(m)) tax adjustment (Note 13)	—	—	(3,036)	—	—	(3,036)
Balances, December 31, 2006	27,505,526	—	58,985	64,046	(47)	122,984
Net loss	—	—	—	(11,359)	—	(11,359)
Pension other comprehensive loss, net of tax of \$4	—	—	—	—	(8)	(8)
Comprehensive loss						(11,367)
Shares issued from exercise of stock options, including excess tax benefits of \$54	54,734	—	544	—	—	544
Purchase and retirement of treasury stock	(85,000)	—	(97)	(559)	—	(656)
Stock-based compensation	—	—	1,046	—	—	1,046
Adoption of Accounting Standard-FIN 48	—	—	—	(404)	—	(404)
Balances, December 31, 2007	27,475,260	—	60,478	51,724	(55)	112,147
Net loss	—	—	—	(17,711)	—	(17,711)
Pension other comprehensive loss, net of tax of \$178	—	—	—	—	(331)	(331)
Comprehensive loss						(18,042)
Stock-based compensation	—	—	1,296	—	—	1,296
Balances, December 31, 2008	27,475,260	\$ —	\$ 61,774	\$ 34,013	\$ (386)	\$ 95,401

See accompanying summary of accounting policies and notes to consolidated financial statements.

Table of Contents**MTR GAMING GROUP, INC.****CONSOLIDATED STATEMENTS OF CASH FLOWS**

(dollars in thousands)

	Years ended December 31,		
	2008	2007	2006
Cash flows from operating activities:			
Net (loss) income	\$(17,711)	\$ (11,359)	\$ 4,446
Adjustments to reconcile net income to net cash provided by net operating activities:			
Depreciation	29,839	27,793	20,101
Amortization of deferred financing fees	4,299	2,983	2,432
Loss on debt modification	3,820	—	—
Impairment loss	8,750	—	—
Bad debt expense	37	16	164
Stock compensation expense	1,296	1,046	157
Deferred income taxes	3,597	(2,854)	(4,982)
Increase in long-term deferred compensation	1,665	861	1,633
Loss on disposal of property	2,956	133	245
Minority interest	—	(202)	(245)
Equity in loss of unconsolidated joint venture	3,550	234	—
Change in operating assets and liabilities:			
Accounts receivable	2,316	(2,901)	(549)
Prepaid income taxes	(6,208)	(851)	1,345
Other current assets	(10,869)	(2,951)	(1,402)
Accounts payable	(1,961)	(820)	1,487
Accrued liabilities	(8,193)	636	11,154
Net cash provided by continuing operating activities	17,183	11,764	35,986
Net cash (used in) provided by discontinued operating activities	(2,490)	3,216	6,220
Net cash provided by operating activities	14,693	14,980	42,206
Cash flows from investing activities:			
(Increase) decrease in restricted cash	(369)	(170)	23
Payment of Presque Isle Downs' slot license fee	—	(51,142)	—
Investment in Jackson Trotting Association, LLC	—	—	—
Investment in North Metro Harness Initiative, LLC	(499)	—	—
Purchase of off-track wagering facility	160	(7,104)	—
Decrease (increase) in deposits and other	11,157	(14,641)	(8,150)
Short-term investments	—	12,657	(12,657)
Contribution from minority interest holders	—	2,352	2,656
Proceeds from the sale of the Ramada Inn and Speedway Casino	12,818	—	—
Proceeds from the sale of Binion's Gambling Hall & Hotel	28,329	—	—
Proceeds from disposal of property	1,758	—	—
Capital expenditures	(11,734)	(86,776)	(141,081)
Net cash provided by (used in) continuing investing activities	41,620	(144,824)	(159,209)
Net cash used in discontinued investing activities	(119)	(1,957)	(3,206)
Net cash provided by (used in) investing activities	41,501	(146,781)	(162,415)
Cash flows from financing activities:			
Principal payments on long-term debt and capital lease obligations	(54,680)	(6,435)	(38,881)
Proceeds from issuance of long-term debt	—	158,533	38,127
Proceeds from issuance of senior subordinated notes	—	—	125,000
Financing cost paid	(3,525)	(7,797)	(5,544)
Purchase and retirement of treasury stock	—	(654)	—
Proceeds from exercise of stock options	—	490	409
Tax benefit from exercise of stock options	—	54	79
Net cash (used in) provided by continuing financing activities	(58,205)	144,191	119,190
Net cash used in discontinued financing activities	(23)	(133)	(126)
Net cash (used in) provided by financing activities	(58,228)	144,058	119,064
Net (decrease) increase in cash and cash equivalents	(2,034)	12,257	(1,145)
Less: Cash and cash equivalents related to the deconsolidation of North Metro Harness Initiative, LLC	—	(2,643)	—
Cash and cash equivalents, beginning of year	31,045	21,431	22,576
Cash and cash equivalents, end of year	\$ 29,011	\$ 31,045	\$ 21,431
Cash paid during the year for:			
Interest paid	\$ 36,700	\$ 31,435	\$ 20,644
Income taxes (refunded) paid	\$ (2,421)	\$ 4,624	\$ 7,400

See accompanying summary of accounting policies and notes to consolidated financial statements.

F-6

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS****1. BUSINESS AND BASIS OF PRESENTATION**

MTR Gaming Group, Inc. (the "Company" or "we"), a Delaware corporation, owns and operates racetrack, gaming and hotel properties in West Virginia, Pennsylvania, and Ohio.

The Company, through our wholly-owned subsidiaries, owns and operates The Mountaineer Casino, Racetrack & Resort in Chester, West Virginia; Presque Isle Downs & Casino in Erie, Pennsylvania; and Scioto Downs in Columbus, Ohio. We also own a 50% interest in North Metro Harness Initiative, LLC, which operates Running Aces Harness Park in Anoka County, Minnesota, and a 90% interest in Jackson Trotting Association, LLC.

During 2007 and part of 2008, we owned and operated Binion's Gambling Hall & Hotel in Las Vegas, Nevada, and the Ramada Inn and Speedway Casino in North Las Vegas, Nevada. As discussed in Note 4, we sold Binion's on March 7, 2008, pursuant to a Stock Purchase Agreement executed between the Company and TLC Casino Enterprises, Inc., and on June 3, 2008, we completed the sale of the Speedway pursuant to the terms of an Asset Purchase and Sale Agreement executed between the Company and Lucky Lucy D, LLC. Reclassifications have been made to the prior period presentation to reflect the assets and liabilities of Binion's and Speedway as held for sale and the operating results and cash flows as discontinued operations.

On December 4, 2008, Jackson Trotting Association, LLC ceased the operations of racing and simulcast wagering at Jackson Harness Raceway in Jackson, Michigan and surrendered the racing license to the Michigan Racing Commission. Accordingly, live and simulcast racing will not be scheduled in 2009. Through our wholly-owned subsidiary, Jackson Racing, Inc., we acquired a 90% interest in Jackson Trotting Association LLC in December 2005. Reclassifications have been made to the prior period presentation to reflect the assets, liabilities, operating results and cash flows of Jackson as discontinued operations.

Presque Isle Downs commenced slot machine gaming operations on February 28, 2007, and live thoroughbred horse racing with parimutuel wagering on September 1, 2007. During 2007, we completed 25 racing dates as approved by the Pennsylvania Racing Commission and during 2008 we completed 101 racing dates.

In April 2007, Scioto Downs, through its subsidiary RacelineBet, Inc., launched Racelinebet.com, a national account wagering service that offers online and telephone wagering on horse races as a marketing affiliate of AmericaTab LTD.

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES*Principles of Consolidation*

The accompanying consolidated financial statements include the accounts of the Company as described in Note 1. All significant intercompany transactions have been eliminated in consolidation. Minority interests represent the proportionate share of the equity that is owned by third parties in entities controlled by the Company. The net income or loss of such entities is allocated to the minority interests based on their percentage ownership throughout the year.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenue and expenses for the reporting periods. Actual results could differ from those estimates.

Cash and Cash Equivalents

Cash and cash equivalents include all unrestricted, highly liquid investments purchased with a remaining maturity of 90 days or less. We maintain cash and cash equivalents with various financial institutions in excess of the amount insured by the Federal Deposit Insurance Corporation. Cash and cash equivalents also includes cash maintained for gaming operations.

Restricted Cash

Restricted cash includes unredeemed winning tickets from its racing operations, funds related to horsemen's fines and certain simulcasting funds that are restricted to payments for improving horsemen's facilities and increasing racing purses at Scioto Downs, and short-term certificates of deposit that serve as collateral for certain bonding requirements.

Fair Value of Financial Instruments

Financial instruments consist of cash and cash equivalents, restricted cash, accounts receivable, accounts payable and long-term and other debt. The fair value of our financial instruments approximates the carrying value at December 31, 2008 and 2007, except for our senior unsecured notes and senior subordinated notes. The aggregate fair value of our senior unsecured notes and senior subordinated notes was \$166.5 million and \$248.1 million at December 31, 2008 and 2007, respectively.

Inventories

Inventories are stated at the lower of cost (determined by the first-in, first-out method) or market.

Deferred Financing Costs

Deferred financing costs that we incur in connection with the issuance of debt are deferred and amortized to interest expense over the life of the underlying debt. During each of the three years ended December 31, we incurred deferred financing costs as follows: 2008—\$3.5 million; 2007—\$7.8 million; and 2006—\$5.5 million; and related amortization expense was as follows: 2008—\$4.3 million; 2007—\$3.0 million; and 2006—\$2.4 million.

As a result of the Second and Fourth Amendments to our Fifth Amended and Restated Credit Agreement and the reduction in borrowing capacity as discussed in Note 7, we were required to proportionately reduce the amount of existing deferred financing costs. Consequently, we recorded write-offs of deferred financing costs of approximately \$3.8 million during 2008. This amount is reflected in the consolidated statements of operations as a loss on debt modification.

Property and Equipment

Property and equipment are recorded at cost, less accumulated depreciation. Expenditures for major renewals and betterments that significantly extend the useful life of existing property and equipment are capitalized and depreciated, while expenditures for routine repairs and maintenance are

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

expensed as incurred. We capitalize direct materials, labor and interest during construction periods. Gains or losses on the disposal of property and equipment are included in operating income. Depreciation, which includes amortization of assets under capital leases, is computed using the straight-line method over the following estimated useful lives:

Buildings and improvements	20 to 40 years
Furniture and fixtures	5 to 7 years
Equipment and automobiles	3 to 15 years

Interest is allocated and capitalized to construction in progress by applying our cost of borrowing rate to qualifying assets. Interest capitalized in 2007 and 2006 was \$2.2 million and \$6.0 million, respectively. There was no interest capitalized during 2008.

Goodwill and Other Intangible Assets

Goodwill and other indefinite-lived intangible assets are required to be evaluated for impairment on an annual basis in accordance with the provisions of *Statement of Financial Accounting Standards ("SFAS") No. 142, Goodwill and Other Intangible Assets* ("SFAS 142").

SFAS 142 requires a two-step process be performed to analyze whether or not goodwill and other indefinite-lived intangible assets have been impaired. Step one requires that the fair value be compared to book value. If the fair value is higher than the book value, no impairment is indicated and there is no need to perform the second step of the process. If the fair value is lower than the book value, step two must be evaluated. Step two requires that a hypothetical purchase price allocation analysis be done to reflect a current book value of goodwill. This current value is then compared to the carrying value of the asset. If the current fair value is lower than the carrying value, impairment must be recorded.

The costs associated with obtaining definite-lived intangible assets are deferred and amortized over their estimated useful lives. SFAS 142 also requires that definite-lived intangible assets are reviewed for impairment.

In accordance with the requirements of SFAS 142, we performed the annual impairment tests of our goodwill and other intangible assets as of December 31, 2008. As a result of these tests, we determined that there was no impairment of goodwill or intangible assets, other than that related to Jackson Harness Raceway, as discussed in Note 4.

Revenue Recognition

Gaming revenues consist of the net win from gaming activities, which is the difference between amounts wagered and amounts paid to winning patrons, and is recognized at the time wagers are made net of winning payouts to patrons.

Parimutuel commissions consist of commissions earned from thoroughbred and harness racing, and importing of simulcast signals from other race tracks. Parimutuel commissions are recognized at the time wagers are made. Such commissions are a designated portion of the wagering handle as determined by state racing commissions, and are shown net of the taxes assessed by state and local agencies, as well as purses and other contractual amounts paid to horsemen associations. We recognize revenues from fees earned through the exporting of simulcast signals to other race tracks at the time

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

wagers are made. Such fees are based upon a predetermined percentage of handle as contracted with the other race tracks.

Revenues from food and beverage are recognized at the time of sale and revenues from lodging are recognized on the date of stay. Other revenues are recorded at the time services are rendered or merchandise is sold.

Promotional Allowances and Complimentaries

We offer certain promotional allowances to our customers, including complimentary lodging and food and slot machine vouchers. The retail value of these promotional items is shown as a deduction from total revenues on our consolidated statements of operations.

Total revenues do not include the retail amount of complimentaries provided gratuitously to customers. For each of the three years ended December 31, these complimentaries were as follows: 2008—\$2.5 million; 2007—\$2.3 million; and 2006—\$2.2 million.

Frequent Players Program

We offer programs whereby our participating patrons can accumulate points for wagering that can be redeemed for lodging, food and beverage, merchandise and cash. Based upon the historical point redemptions of frequent player program points, we record an estimated liability for the redemption of earned, but unredeemed points. This liability can be impacted by changes in the programs, increases in membership and changes in the redemption patterns of our participating patrons.

Income Taxes

We account for our income taxes in accordance with *SFAS No. 109, Accounting for Income Taxes* ("SFAS 109"). Under SFAS 109, an asset and liability method is used whereby deferred tax assets and liabilities are determined based upon temporary differences between bases used for financial reporting and income taxes reporting purposes. Income taxes are provided based on the enacted tax rates in effect at the time such temporary differences are expected to reverse. A valuation allowance, when determined to be necessary, is provided for certain deferred tax assets if it is more likely than not that we will not realize tax assets through future operations. The Company and its subsidiaries file a consolidated federal income tax return. We are no longer subject to federal and state income tax examinations for years before 2005.

Effective January 1, 2007, we adopted Financial Accounting Standards Board ("FASB") Interpretation No. 48, *Accounting for Uncertainty in Income Taxes—an interpretation of FASB Statement No. 109* ("FIN 48"). FIN 48 clarifies the accounting for income taxes by prescribing the minimum recognition threshold an uncertain tax position is required to meet before tax benefits associated with such uncertain tax positions are recognized in the financial statements. FIN 48 also provides guidance on derecognition, measurement, classification, interest and penalties, accounting in interim periods, disclosure and transition. FIN 48 also requires that amounts recognized in the consolidated balance sheet related to uncertain tax positions be classified as a current or noncurrent liability, based upon the expected timing of the payment to a taxing authority.

As a result of the implementation of FIN 48, we recognized an increase in our accrued income tax liabilities of \$986,000, which was accounted for as a \$404,000 reduction to the January 1, 2007 balance

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

of retained earnings and a \$582,000 increase in deferred tax assets. Included in the increase in accrued income tax liabilities is approximately \$602,000 of accrued interest. The liability for unrecognized tax benefits was approximately \$465,000 as of January 1, 2007. The amount of unrecognized tax benefits that, if recognized, would affect the effective tax rate is approximately \$94,000.

Earnings per Share

Basic earnings per share is computed as net income available to common shareholders divided by the weighted average number of common shares outstanding during the year. Diluted earnings per share reflects the potential dilution that could occur from common shares issuable through stock options and other convertible securities utilizing the treasury stock method. Diluted earnings per share is calculated by using the weighted average number of common shares outstanding adjusted to include the potentially dilutive effect of these occurrences. For the years ended December 31, 2008 and 2007 all potentially dilutive options have been considered anti-dilutive because of the net loss from continuing operations for 2008 and 2007.

The following tables illustrate the required disclosure of the reconciliation of the numerators and denominators of the basic and diluted net income per share from continuing operations computations during each of the three years ended December 31.

	Year ended December 31		
	2008	2007	2006
	(dollars in thousands, except per share amounts)		
(Loss) income from continuing operations	\$ (15,278)	\$ (5,868)	\$ 7,407
Loss from discontinued operations	(2,433)	(5,491)	(2,961)
Net (loss) income available to common shareholders	<u>\$ (17,711)</u>	<u>\$ (11,359)</u>	<u>\$ 4,446</u>
Shares outstanding:			
Weighted average shares outstanding	27,475,260	27,537,785	27,483,392
Effect of dilutive securities—stock options	—	—	281,296
Diluted shares outstanding	<u>27,475,260</u>	<u>27,537,785</u>	<u>27,764,688</u>
Basic net (loss) income per common share:			
Continuing operations	\$ (0.56)	\$ (0.21)	\$ 0.27
Discontinued operations	(0.09)	(0.20)	(0.11)
Basic net (loss) income per common share	<u>\$ (0.65)</u>	<u>\$ (0.41)</u>	<u>\$ 0.16</u>
Diluted net (loss) income per common share:			
Continuing operations	\$ (0.56)	\$ (0.21)	\$ 0.27
Discontinued operations	(0.09)	(0.20)	(0.11)
Diluted net (loss) income per common share	<u>\$ (0.65)</u>	<u>\$ (0.41)</u>	<u>\$ 0.16</u>

The dilutive EPS calculations do not include potential dilutive securities for each of the three years ended December 31 because they were anti-dilutive, as follows: 2008—1.4 million; 2007—1.3 million; and 2006—1.0 million.

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)*****Stock-Based Compensation***

We account for stock-based compensation in accordance with SFAS No. 123(R), *Share-Based Payment* ("SFAS 123 (R)"), which is a revision of SFAS No. 123, *Accounting for Stock-Based Compensation*. SFAS 123(R) requires all share-based payments to employees, including grants of employee stock options, to be recognized in the consolidated statement of operations based on their fair values and that compensation expense be recognized for awards over the requisite service period of the award or to an employee's eligible retirement date, if earlier. SFAS 123(R) also requires the benefits of tax deductions in excess of recognized compensation cost to be reported as a financing cash flow, rather than as an operating cash flow.

Reclassifications

Certain reclassifications have been made to the prior year's consolidated financial statement presentation to conform to the current presentation. These reclassifications did not affect our consolidated net income or cash flows.

New Accounting Pronouncements***Pronouncements Implemented***

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements* ("SFAS 157"), which provides guidance for measuring the fair value of assets and liabilities and requires expanded disclosures about fair value measurements. SFAS 157 indicates that fair value should be determined based on the assumptions marketplace participants would use in pricing the asset or liability and provides additional guidelines to consider in determining the market-based measurement. In February 2008, the FASB delayed the effective date of SFAS 157 until January 1, 2009 for all non-financial assets and non-financial liabilities, except those that are recognized or disclosed at least annually. We adopted SFAS 157 on January 1, 2008 for financial assets and financial liabilities, and there was no impact from the adoption of SFAS 157 to our consolidated financial statements. We do not expect the adoption of SFAS 157 for non-financial assets and liabilities to have a material impact on our consolidated financial statements.

SFAS 157 requires fair value measurement be classified and disclosed in one of the following categories:

Level 1: Unadjusted quoted market prices for identical assets and liabilities.

Level 2: Inputs other than Level 1 that are observable, either directly or indirectly, for the asset or liability through corroboration with market data for substantially the full term of the asset or liability.

Level 3: Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities (management's own assumptions about what market participants would use in pricing the asset or liability at the measurement date).

We have a deferred compensation arrangement with a former executive that is structured as a rabbi trust. The investments of the rabbi trust are valued using quoted market prices (Level 1 inputs). The fair value of the investments in the rabbi trust at December 31, 2008 was \$11.5 million.

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)**

The carrying value of our senior secured revolving credit facility at December 31, 2008 approximates fair value based on the interest rates available on similar borrowings. The fair value of our \$130 million senior unsecured notes and \$125 million senior subordinated notes was \$97.0 million and \$69.5 million, respectively, at December 31, 2008. The fair value is determined based on Level 2 inputs including quoted market prices and bond terms and conditions.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities* ("SFAS No. 159"). SFAS No. 159 permits entities to choose to measure many financial instruments and certain other items at fair value that are not currently required to be measured at fair value. SFAS No. 159 is effective for fiscal years beginning after November 15, 2007. We did not elect to apply the fair value option to any financial instruments.

3. RISKS AND UNCERTAINTIES (UNAUDITED)***Refinancing of Existing Indebtedness***

Our \$130 million 9.75% senior unsecured notes mature on April 1, 2010. However, our Fifth Amended and Restated Credit Agreement, as amended, requires us to refinance those notes with other unsecured indebtedness by January 2, 2010 on terms and conditions acceptable to our senior secured lenders. If the senior unsecured notes are not refinanced by this date, the maturity date of the amounts outstanding under our senior secured revolving credit facility will be accelerated to January 2, 2010. In any event, our credit agreement expires March 31, 2010. If we are unable to refinance our senior unsecured notes by either January 2, 2010, or an extended maturity deadline to which our senior secured lenders may approve, and our credit agreement by March 31, 2010, it would have a material adverse effect on our financial position and could raise doubts as to our ability to continue as a going concern.

Compliance with Debt Covenants

The Fifth Amended and Restated Credit Agreement, as amended, contains customary affirmative and negative covenants that include the requirement that we satisfy, on a consolidated basis, specified quarterly financial tests. Although we anticipate that we will maintain compliance with these covenants for each of the quarters in the year ending December 31, 2009, failure to meet these financial tests could result in a demand for the acceleration of repayment of amounts outstanding under the credit facility and would have a material adverse effect on our financial position and could raise substantial doubts as to our ability to continue as a going concern.

Concentration of Credit Risk

We maintain cash balances at certain financial institutions in excess of amounts insured by the Federal Deposit Insurance Corporation. In addition, we maintain significant cash balances on hand at our gaming facilities.

Cyclical Nature of Business

Our primary business involves leisure and entertainment. The economic health of the leisure and entertainment industry is affected by a number of factors that are beyond our control, including: (1) general economic conditions and economic conditions specific to our primary markets; (2) levels of

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****3. RISKS AND UNCERTAINTIES (UNAUDITED) (Continued)**

disposable income of patrons; (3) increased transportation costs resulting in decreased travel by patrons; (4) local conditions in key gaming markets, including seasonal and weather-related factors; (5) increases in gaming and racing taxes or fees; (6) competitive conditions in the gaming, leisure and entertainment industry and in particular markets, including the effect of such conditions on the pricing of our products; (7) substantial price increases in the cost of energy in the United States; and (8) the relative popularity of entertainment alternatives to gaming and racing that compete for the leisure dollar. Any of these factors could materially adversely impact the leisure and entertainment industry generally, and as a result, our business, financial condition and results of operations.

It is unlikely that we will be able to obtain business interruption coverage for casualties resulting from severe weather, and there can be no assurance that we will be able to obtain casualty insurance coverage at affordable rates, if at all, for casualties resulting from severe weather.

Licensing

We are subject to extensive state and local regulation. State and local authorities require us and our subsidiaries to demonstrate suitability to obtain and maintain various licenses, and require that we have registrations, permits and approvals, to conduct gaming and racing operations, to sell alcoholic beverages and tobacco in our facilities and to operate our food service facilities. These regulatory authorities may, for any reason set forth in applicable legislation or regulation, limit, condition, suspend or revoke a license or registration to conduct gaming or racing operations or prevent us from owning the securities of any of our gaming or racing subsidiaries. In addition, we must periodically apply to renew many of our licenses or registrations. Any failure to maintain or renew our existing licenses, registrations, permits or approvals would have a material adverse effect on us. In addition, to enforce applicable laws and regulations, regulatory authorities may levy substantial fines against or seize the assets of our company, our subsidiaries or the people involved in violating gaming laws or regulations. Any of these events could have a material adverse effect on our business, financial condition and results of operations.

All of the states in which we conduct live racing impose requirements with respect to the minimum number of live race dates annually. If we fail to meet the minimum live racing day requirements, suspension or non-renewal of our gaming licenses could result; which would have a material adverse effect on our business, financial condition, results of operations and ability to meet our payment obligations under our various debt instruments.

Potential Changes in Regulatory Environment

If current laws are modified, or if additional laws or regulations are adopted, it could have a material adverse effect on us. From time to time, legislators and special interest groups have proposed legislation that would restrict or prevent gaming or racing operations in the jurisdictions in which we operate. Restriction on or prohibition of our gaming or racing operations, whether through legislation or litigation, could have a material adverse effect on our business, financial condition and results of operations.

Taxation

We pay substantial taxes and fees with respect to our operations. From time to time, federal, state and local legislators and officials have proposed changes in tax laws, or in the administration of such laws, affecting the gaming and racing industry. Changes in the tax laws or administration of those laws, if adopted, could have a material adverse effect on our business, financial condition and results of operations.

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****3. RISKS AND UNCERTAINTIES (UNAUDITED) (Continued)*****Competition***

We face substantial competition in each of the markets in which our gaming and racing facilities are located. Some of the competitors have significantly greater name recognition and financial and marketing resources than we do; some are permitted to conduct additional forms of gaming; and some pay substantially lower taxes than we do, which may permit them to spend more for marketing and promotions and thus gain a competitive advantage over us. All of our gaming and racing operations primarily compete with other gaming and racing operations in their geographic areas. New expansion and development activity is occurring in each of the relevant markets, which may intensify competitive pressures and could have a material adverse effect on us.

Environmental Regulations

We are subject to various federal, state and local environmental laws and regulations that govern activities that may have adverse environmental effects, such as discharges to air and water, as well as the management and disposal of solid and hazardous wastes. These laws are complex, and subject to change. Under such laws and regulations, we may incur costs to obtain permits and other approvals required for our activities and operations, or to achieve or maintain compliance. In addition, we may face penalties or other liabilities in the event that we fail to comply with these laws and regulations.

4. ACQUISITIONS AND DISPOSITIONS OF PROPERTY***Jackson Trotting Association, LLC (d/b/a Jackson Harness Raceway)***

On December 6, 2005, our wholly-owned subsidiary, Jackson Racing, Inc., acquired a 90% interest in Jackson Trotting Association, LLC, which operated Jackson Harness Raceway in Jackson, Michigan, and offered harness racing from late-April to mid-July, parimutuel wagering and casual dining. Jackson Harness Raceway is located on property leased from Jackson County, Michigan on the Jackson County Fairgrounds through December 31, 2012.

Since acquisition, Jackson Trotting has generated operating losses and is projecting further operating losses. Additionally, Jackson Trotting has substantially exhausted its operating funds, including funds provided by the Company. Furthermore, under the terms of our Fifth Amended and Restated Credit Agreement, as amended, we do not have the ability to provide further financial support to Jackson Trotting.

Based on the current and projected operating losses and the funding shortfall, we performed an evaluation to determine whether the assets of Jackson Trotting were impaired. Jackson Trotting's assets consisted primarily of a \$2.6 million intangible asset that represented the assigned value of the racing licenses held by Jackson Trotting. The value assigned to the racing licenses considered that the racing licenses permit Jackson Trotting to conduct live racing and simulcasting operations, and if legislative proposals in Michigan were passed, would permit Jackson Trotting to operate electronic gaming devices.

Based upon the projected operating losses, our inability to provide further funding to Jackson Trotting and an assessment of the potential for legislation permitting gaming operations at the racetracks in Michigan, we concluded that the Jackson Trotting intangible asset was impaired and, accordingly, recorded an impairment loss of \$2.6 million (\$2.1 million net of tax) during 2008.

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****4. ACQUISITIONS AND DISPOSITIONS OF PROPERTY (Continued)**

On December 4, 2008, Jackson Trotting ceased the operations of racing and simulcast wagering at Jackson Harness Raceway and surrendered the racing license to the Michigan Racing Commission. Accordingly, live and simulcast racing will not be scheduled in 2009. In connection with the closure Jackson Trotting recorded approximately \$675,000 related to contractual obligations. Reclassifications have been made to the prior period presentation to reflect the assets, liabilities, operating results and cash flows of Jackson as discontinued operations.

North Metro Harness Initiative, LLC (d/b/a Running Aces Harness Park)

In June 2004, our wholly-owned subsidiary, MTR-Harness, Inc., acquired a 50% interest in North Metro Harness Initiative, LLC (*d/b/a Running Aces Harness Park*), then a wholly-owned subsidiary of Southwest Casino Corporation. In early 2008, North Metro completed construction of a harness racetrack and card room on a 178.4-acre site approximately 30 miles northeast of Minneapolis, Minnesota. Running Aces commenced live racing and simulcast operations (import and export) with parimutuel wagering on April 11, 2008, and opened a 50-table card room offering "non-banked" games (those in which the players play only against each other instead of against the house) on June 30, 2008.

The cost of construction of North Metro, including furniture, fixtures and equipment and start-up expenses, was approximately \$62.5 million, \$42.3 million of which was separately financed through Black Diamond Commercial Finance, LLC as agent (collectively, "Black Diamond"), without recourse to us except for a \$1.0 million guarantee that we provided in July 2008. The guarantee will continue until the earlier of July 1, 2010 or prepayment of the Black Diamond credit agreement. Through December 31, 2008, we made aggregate capital contributions in North Metro of approximately \$12.8 million (exclusive of legal and other fees). Additionally, in May 2008 we provided two letters of credit in the amounts of \$238,625 (which was released in February 2009) and \$135,000 (which is expected to be released in April 2009) and a surety bond in the amount of \$250,000. During the year ended December 31, 2008, we recorded equity losses in North Metro of approximately \$3.5 million.

On October 19, 2008, Southwest Casino Corporation sold its 50% membership interest in North Metro to Black Diamond for (i) \$1.00; (ii) relief from a \$1 million guarantee by Southwest of North Metro's obligations; (iii) a right to repurchase the membership interest; and (iv) certain other considerations. Although we have been in discussions with Black Diamond, we have not entered into similar agreements and continue to own our 50% membership interest in North Metro. Black Diamond has requested that we make additional investments in North Metro; however under the terms of our Fifth Amended and Restated Credit Agreement, as amended, we do not have the ability to provide further financial support to North Metro. Since acquiring 50% of the venture, Black Diamond has hired a management company to run the day-to-day operations, and on March 2, 2009, removed the board seat held by MTR-Harness, Inc. from North Metro's board of directors. Our interest in North Metro is pledged to Black Diamond as collateral for the construction loan.

On October 31, 2008, the Black Diamond credit agreement was amended to provide for additional loans to North Metro of up to \$1,250,000 (with the making of such additional loans being subject to Black Diamond's sole and absolute discretion). Concurrently, Black Diamond lent North Metro an additional \$650,000, of which \$430,313 was applied to pay Black Diamond interest in arrears and of which \$219,687 was lent to North Metro for additional working capital. On November 3, 2008, Black Diamond and MTR-Harness entered into a Forbearance Agreement pursuant to which Black Diamond agreed not to enforce, until November 25, 2008, its rights under the Black Diamond credit agreement.

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****4. ACQUISITIONS AND DISPOSITIONS OF PROPERTY (Continued)**

arising from the failure of North Metro to satisfy certain financial covenants, including the satisfaction of a minimum EBITDA threshold, a maximum leverage threshold, and a minimum cash requirement. On November 24, 2008, Black Diamond and MTR-Harness entered into an additional Forbearance Agreement pursuant to which Black Diamond agreed not to enforce its rights under the Black Diamond credit agreement until January 19, 2009. While Black Diamond has reserved all rights under the credit agreement, it has not taken any action with respect to MTR-Harness or the Company (other than the removal of MTR-Harness' board seat from North Metro's board of directors).

Based upon the current default under the Black Diamond credit agreement (subject to the above-mentioned Forbearance Agreement then in effect), Black Diamond's transaction with Southwest and our inability to provide further funding to North Metro, we determined that there was substantial doubt as to whether we could recover our investment in North Metro. Accordingly, during 2008 we recorded impairment losses of \$8.7 million (for which a tax benefit could not be recognized). This amount has been included as equity in loss of unconsolidated joint venture in the consolidated statements of operations. In addition, because Black Diamond has not called our \$1 million guarantee in whole or in part, and given the relief provided by Black Diamond to Southwest relative to its guarantee, we do not believe that payment of the guarantee is probable at this time. Accordingly, as of December 31, 2008, we have not recorded this obligation.

We previously determined that North Metro Harness Initiative, LLC was a variable interest entity in accordance with FASB Interpretation No. 46, "Consolidation of Variable Interest Entities," ("FIN 46") and subsequent revision FIN 46R. We also determined that we were the primary beneficiary for North Metro within the meaning of FIN 46(R), and accordingly, began consolidating the financial statements of North Metro effective in October 2005. Upon execution of the non-recourse financing obtained by North Metro, we reassessed the conclusion that North Metro was a variable interest entity in accordance with FIN 46, and concluded that North Metro was no longer a variable interest entity. Therefore, effective April 30, 2007, we deconsolidated North Metro and applied the equity method to our investment in North Metro. The net operating loss and minority interest recorded by the Company through April 30, 2007 of \$321,000 and \$117,000, respectively, remained in our consolidated statement of operations, and North Metro's cash flows related to operating, investing and financing activities for the period January 1, 2007 through April 30, 2007 remained in our consolidated statement of cash flows. For the period subsequent to April 30, 2007, our equity in the loss of North Metro is included in "Equity in loss of unconsolidated joint venture." However, the guarantees on North Metro's credit facility discussed above necessitated a re-evaluation of whether North Metro is a variable interest entity in accordance with FIN 46. We completed this re-evaluation and determined that North Metro was not a variable interest entity; and therefore continued to apply the equity method to the investment in North Metro.

At December 31, 2008, North Metro had total assets and total liabilities of \$59.5 million and \$48.5 million, respectively. The assets consisted principally of gaming equipment, land, building and financing costs. Liabilities consisted primarily of accounts payable and borrowings under its financing agreement.

Binion's Gambling Hall & Hotel

On March 7, 2008, we sold 100% of the stock of our wholly-owned subsidiaries, Speakeasy Gaming of Fremont, Inc., which owned and operated Binion's Gambling Hall & Hotel, and Speakeasy Fremont

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****4. ACQUISITIONS AND DISPOSITIONS OF PROPERTY (Continued)**

Experience Operating Company in accordance with the terms of a Stock Purchase Agreement dated June 26, 2007 (as subsequently amended), executed between the Company and TLC Casino Enterprises, Inc. The transaction was subject to purchase price adjustments based on changes in the net working capital, certain capital expenditures between execution and closing, and a \$3.5 million working capital adjustment which remained with Binion's upon closing. Net cash to the Company at closing was approximately \$28.0 million. However, in connection with our original acquisition of Binion's on March 11, 2004, we provided limited guarantees, which reduce each month as rental payments are made on certain land leases, some of which expired in March 2008, and three of which remained in effect. One of those three (approximately \$0.6 million) expires in March 2009 and the two remaining leases (totaling approximately \$2.0 million) expire in March 2010. The purchaser remains obligated to use its reasonable best efforts to assist us in obtaining releases of these guarantees.

In January 2009, the post-closing purchase price adjustment was settled with TLC Casino Enterprises, Inc. Accordingly, we paid TLC the total amount due of approximately \$1.5 million. The amount was deposited into an escrow account and will be used to pay a portion of the land lease obligations that have been guaranteed by the Company as discussed above.

Binion's assets and liabilities have been reflected as held for sale in our consolidated balance sheets as of December 31, 2007 and 2006, and its operating results and cash flows have been reflected as discontinued operations for each of the three years ended December 31, 2008. On December 31, 2007, we recorded a loss of \$2.0 million to adjust the carrying value of Binion's assets to the anticipated proceeds, less costs to sell. Upon completion of the sale on March 7, 2008, and resolution of the purchase price adjustment, we incurred an additional loss on disposal of \$0.9 million.

Summary operating results for the discontinued operations and the assets and liabilities held for sale of Binion's as of and for the year ended December 31 are as follows:

	2008	2007	2006
	(dollars in thousands)		
Net revenues	\$ 9,857	\$59,778	\$59,800
Loss from discontinued operations before income taxes	(2,436)	(7,972)	(5,359)
Loss from discontinued operations, net of income tax benefit	(1,507)	(5,171)	(3,508)
Assets held for sale:			
Current assets	—	3,115	3,284
Property and equipment	—	29,894	35,446
Other assets	—	2,442	1,532
Total assets held for sale	<u>\$ —</u>	<u>\$35,451</u>	<u>\$40,262</u>
Liabilities held for sale:			
Current liabilities	—	4,829	5,881
Other noncurrent liabilities	—	5,273	5,316
Total liabilities held for sale	<u>\$ —</u>	<u>\$10,102</u>	<u>\$11,197</u>

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****4. ACQUISITIONS AND DISPOSITIONS OF PROPERTY (Continued)*****Ramada Inn and Speedway Casino***

On June 3, 2008, our wholly-owned subsidiary, Speakeasy Gaming of Las Vegas, Inc., sold the gaming assets of the Ramada Inn and Speedway Casino to Lucky Lucy D, LLC in accordance with the terms of an Asset Purchase and Sale Agreement dated January 11, 2008. Pursuant to the terms of the agreement, Lucky Lucy paid \$2.0 million in cash for the gaming assets and is obligated to pay an additional amount of up to \$4.775 million subject to an earn-out provision based on the property's gross revenues over the four-year period that commenced January 11, 2008. Any proceeds that are received will be recorded as the amounts are realized. This sale was the second part of the transaction, the first part of which involved the sale of Speedway's real property to Ganaste LLC on January 11, 2008. A shareholder of Ganaste LLC is the sole owner of Lucky Lucy. Ganaste paid \$11.4 million in cash for the real property.

Speedway's assets and liabilities have been reflected as held for sale in our consolidated balance sheets as of December 31, 2007 and 2006, and its operating results and cash flows have been reflected as discontinued operations for each of the three years ended December 31, 2008. On January 11, 2008, we recorded a gain on the sale of the real property in the amount of \$2.8 million, and on June 3, 2008, we recorded a gain on the sale of the gaming assets in the amount of \$1.2 million.

Summary operating results for the discontinued operations and the assets and liabilities held for sale of Speedway as of and for the year ended December 31 are as follows:

	2008	2007	2006
	(dollars in thousands)		
Net revenues	\$4,456	\$10,988	\$12,010
Gain from discontinued operations before income taxes	2,461	45	1,191
Gain from discontinued operations, net of income tax benefit	1,600	32	772
Assets held for sale:			
Current assets	—	175	169
Property and equipment	—	9,061	9,801
Other assets	—	(25)	—
Total assets held for sale	<u>\$ —</u>	<u>\$ 9,211</u>	<u>\$ 9,970</u>
Liabilities held for sale:			
Current liabilities	—	52	67
Other noncurrent liabilities	—	—	—
Total liabilities held for sale	<u>\$ —</u>	<u>\$ 52</u>	<u>\$ 67</u>

Presque Isle Downs and Casino

On July 26, 2007, pursuant to a preexisting agreement, we purchased the land, building and equipment, as well as the simulcast operations, of an off-track wagering facility in Erie, Pennsylvania for \$7.0 million, plus related closing costs and legal fees. Approximately \$6.5 million of the purchase price was allocated to real property and equipment based on an independent appraisal with the remaining amount attributable to goodwill. In January 2008, we entered into an agreement, as

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****4. ACQUISITIONS AND DISPOSITIONS OF PROPERTY (Continued)**

amended, to sell three acres associated with this site for \$1.35 million. This transaction is expected to close by mid-2009.

Other

As discussed in Note 8, in connection with an amendment to and expiration of the employment agreement with Edson R. Arneault, our former President and Chief Executive Officer, on October 31, 2008, Mr. Arneault received as part of the consideration in lieu of any and all payments that would otherwise become due and payable to him under the employment contract, the corporate residence and associated real property and furnishings. Although the conveyance of such property will not take place until May 1, 2009, we recorded a loss on disposal of \$2.1 million at the time of the expiration of the employment contract.

As discussed in Note 8, Presque Isle Downs recorded a \$1.5 million loss in December 2008 on the disposal of certain equipment components of its surveillance system that were defective and malfunctioning.

In October 2008, we received proceeds of \$1.8 million related to the sale of our corporate airplane, which resulted in a gain of \$0.7 million.

In March 2007, Binion's received approximately \$1.3 million as a cash distribution (in lieu of common stock) for its interest as a member (policyholder) in a mutual insurance company that converted to a stock corporation and completed a successful public offering. This amount is included within discontinued operations in the consolidated statements of operations.

In June 2006, we incurred a loss on disposal of property of \$268,000 related to land options and related legal and other costs associated with an unrealized development opportunity.

5. PROPERTY AND EQUIPMENT

Property and equipment consisted of the following at December 31:

	2008	2007
	(dollars in thousands)	(dollars in thousands)
Land	\$ 81,780	\$ 82,341
Building and improvements	261,842	258,983
Equipment	148,541	147,382
Furniture and fixtures	19,972	20,042
Construction in progress	3,759	3,669
	<u>515,894</u>	<u>512,417</u>
Less accumulated depreciation	(148,125)	(123,645)
	<u>\$ 367,769</u>	<u>\$ 388,772</u>

Depreciation expense charged to operations related to property and equipment during each of the three years ended December 31 was as follows: 2008—\$29.8 million; 2007—\$27.8 million; and 2006—\$20.1 million.

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****6. GOODWILL AND OTHER INTANGIBLE ASSETS**

The gross carrying value, accumulated amortization and net book value of each major component of our goodwill and other intangible assets at December 31 was as follows:

	2008			2007		
	Gross Carrying Value	Accumulated Amortization	Net Book Value	Gross Carrying Value	Accumulated Amortization	Net Book Value
	(dollars in thousands)					
Goodwill	\$ 4,267	\$ 2,282	\$ 1,985	\$ 4,427	\$ 2,282	\$ 2,145
Licensing costs	68,819	—	68,819	69,764	721	69,043
	<u>\$73,086</u>	<u>\$ 2,282</u>	<u>\$70,804</u>	<u>\$74,191</u>	<u>\$ 3,003</u>	<u>\$71,188</u>

The accumulated amortization related to goodwill and licensing costs was expensed prior to our adoption of the provisions of Statement of Financial Accounting Standards No. 142, Goodwill and Other Intangible Assets effective January 1, 2002. There was no amortization expense related to goodwill or other intangible assets for any of the three years ended December 31, 2008.

In connection with the sales of Binion's and Speedway during 2008, we surrendered our gaming license in Nevada. Accordingly, unamortized Nevada licensing costs of \$426,000 were written off. In addition, during 2008 we reduced the carrying value of the goodwill associated with an off-track wagering facility that we purchased in 2007. The reduction resulted from the receipt of funds in 2008 associated with the resolution of a dispute.

7. LONG-TERM DEBT AND CAPITAL LEASE OBLIGATIONS

Long-term debt and capital lease obligations at December 31 are summarized as follows:

	2008	2007
	(dollars in thousands)	
Senior unsecured notes (net of unamortized discount of \$277 and \$499, respectively)	\$129,723	\$129,501
Senior subordinated notes	125,000	125,000
Senior secured revolving credit facility	101,949	143,423
Promissory notes and other long-term debt	16,449	28,437
Capital lease obligations	4,489	5,167
	<u>377,610</u>	<u>431,528</u>
Less current portion	(20,498)	(11,008)
Long-term portion	<u>\$357,112</u>	<u>\$420,520</u>

Senior Unsecured Notes

On March 25, 2003, pursuant to SEC Rule 144A we consummated the private sale of \$130 million of 9.75% senior unsecured notes that were priced at 98.806%, which we subsequently exchanged for registered notes. The senior unsecured notes mature on April 1, 2010. We may redeem all or a portion of the senior unsecured notes at a premium that will decrease over time as set forth in the agreement,

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****7. LONG-TERM DEBT AND CAPITAL LEASE OBLIGATIONS (Continued)**

plus accrued and unpaid interest. The discount is being amortized over the term of the notes and is included in interest expense in the consolidated statements of operations.

Senior Subordinated Notes

On May 25, 2006, we consummated the private sale of \$125 million of 9% senior subordinated notes pursuant to SEC Rule 144A, which we subsequently exchanged for registered notes. The net proceeds after fees and expenses were \$123.2 million, of which \$38.6 million was used to repay all outstanding borrowings, including accrued interest, under the Fourth Amended and Restated Credit Agreement.

The senior subordinated notes mature in their entirety on June 1, 2012. At any time on or after June 1, 2009, we may redeem all or a portion of the notes at a premium that will decrease over time (104.5% to 100%) as set forth in the agreement, plus accrued and unpaid interest. At any time prior to June 1, 2009, we may redeem up to 35% of the aggregate principal amount of the notes (subject to certain limitations as specified in the agreement) at a redemption price of 109% of the principal amount, plus accrued and unpaid interest, with the net cash proceeds of public offerings of our common stock. However, the Fifth Amended and Restated Credit Agreement restricts our ability to redeem the notes.

Credit Agreement

On September 26, 2006, we entered into the Fifth Amended and Restated Credit Agreement, which provided for a five-year maturity and consisted of a senior secured revolving credit facility in the amount of \$105.0 million (including a commitment for an increase of the credit facility up to an additional \$50.0 million subject to certain conditions). Of this amount, \$60.0 million was to be available for letters of credit and up to \$10.0 million for short-term funds under a "swing line" facility.

The credit agreement bore interest based, at our option, on either the agent bank's base rate or LIBOR, in each case plus a margin that was based on our leverage ratio at the time, which ranged from 100 to 212.5 basis points for the base rate loans and 175 to 287.5 basis points for the LIBOR loans. We were also required to pay a quarterly non-usage commitment fee which is based upon the leverage ratio. The credit agreement also contained covenants that restricted our ability to make investments, incur additional indebtedness, incur guarantee obligations, pay dividends, create liens on assets, make acquisitions, engage in mergers or consolidations, make capital expenditures or engage in certain transactions with subsidiaries and affiliates.

On June 19, 2007, we entered into the First Amendment to the Fifth Amended and Restated Credit Agreement. The First Amendment among other things (i) provided for an increase of the aggregate commitment (as defined in the Agreement) from \$105.0 million to \$155.0 million; (ii) increased the maximum permitted expansion capital expenditures for our Presque Isle Downs facility from \$256.0 million to \$296.0 million; and (iii) increased the permitted investments in MTR-Harness, Inc. from \$12.5 million to \$15 million.

On March 31, 2008, we entered into the Limited Waiver and Second Amendment to the Fifth Amended and Restated Credit Agreement. The Second Amendment among other things (i) provided for a decrease of the aggregate commitment (as defined in the credit agreement) from \$155.0 million to \$125.0 million; (ii) eliminated the LIBOR loan option and established the interest rate at prime plus 2.25%; (iii) restricted the amount of additional borrowings unless certain pro forma leverage ratios are

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****7. LONG-TERM DEBT AND CAPITAL LEASE OBLIGATIONS (Continued)**

achieved; (iv) revised the maturity date from September 27, 2011 to March 31, 2010 provided the senior unsecured notes are fully refinanced by October 1, 2009; (v) commenced commitment reductions on September 30, 2008 versus December 31, 2008; (vi) limited additional investments in MTR-Harness, Inc. (which owns a 50% interest in North Metro Harness Initiative, LLC) and Jackson Racing, Inc. (which owns a 90% interest in Jackson Trotting Association, LLC) subsequent to March 31, 2008 to \$1.25 million in the aggregate; and (vii) modified certain covenants and related definitions. In connection with the Second Amendment we were required to pay fees of \$2.8 million, exclusive of legal fees and other costs.

On May 9, 2008, we entered into the Third Amendment to the Fifth Amended and Restated Credit Agreement. The Third Amendment among other things revised the definition of investments to include investments made after May 9, 2008 in North Metro consisting of a guaranty or guarantees by the Company in favor of an approved equipment financing company so long as the maximum liability under such guaranty or guarantees and, accordingly, the maximum amount of such investment does not exceed \$1.1 million in the aggregate.

On December 19, 2008, we entered into the Fourth Amendment to the Fifth Amended and Restated Credit Agreement. The Fourth Amendment among other things (i) reduced the aggregate commitment under the agreement from \$125 million to \$110 million; (ii) revised the aggregate commitment reduction schedule; (iii) revised the definition of base rate and applicable margin with respect to the applicable interest rate and computation of fees and charges; (iv) revised the definition of EBITDA to include a provision for one or more addbacks for severance costs for a specified period up to \$2 million; (v) revised the definition of excess cash on hand for covenant calculation purposes; and (vi) revised the required refinancing date of the senior unsecured notes from October 1, 2009 to January 2, 2010. Additionally, during each quarter of 2009 through January 1, 2010, the margin with respect to the applicable interest rate increases by $\frac{1}{2}\%$ from 2.75% to 4.75%, respectively, on the total amount outstanding under our credit facility.

As a result of the Second and Fourth Amendments to our credit agreement and the reduction in borrowing capacity, we were required to proportionately reduce the amount of existing deferred financing costs. Consequently, we recorded write-offs of deferred financing costs of approximately \$3.8 million during 2008. This amount is reflected in the consolidated statements of operations as a loss on debt modification.

The credit agreement, as amended, contains customary affirmative and negative covenants that include the requirement that we satisfy, on a consolidated basis, specified quarterly financial tests. We maintained compliance with these covenants as of December 31, 2008.

The amount that may be borrowed under the credit agreement is subject to a debt incurrence test provided by the indentures governing our senior unsecured notes and senior subordinated notes. Prior to entering into the First Amendment, we obtained the required consents from the holders of our senior notes and senior subordinated notes to amend the indentures governing the senior notes and senior subordinated notes. The amendment to the indentures increased the permitted debt "basket" (i.e. the amount we may borrow whether or not we satisfy the debt incurrence tests) for debt incurred under our credit facility from \$85.0 million to \$135.0 million. We paid a consent fee equal to \$7.50 and \$20.00 per \$1,000 of principal to the holders of the senior notes and senior subordinated notes, respectively, or an aggregate of \$3.4 million. Commencing in the second quarter of 2008 and until the senior subordinated notes are no longer outstanding, we are required to pay additional consent fees of

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****7. LONG-TERM DEBT AND CAPITAL LEASE OBLIGATIONS (Continued)**

\$5.00 per \$1,000 of principal to the holders of our senior subordinated notes if we do not satisfy certain quarterly financial ratios. We have not met these ratios and therefore recorded additional expense of \$1.875 million for the last three quarters of 2008.

In order to borrow additional amounts that would be subordinated to amounts under the credit agreement, we must satisfy the debt incurrence tests provided by the credit agreement, and for amounts in excess of the amended permitted debt basket and the \$10 million other permitted indebtedness basket under the indentures governing the senior unsecured notes and senior subordinated notes (subject to limitations under the credit agreement), we must either satisfy the debt incurrence tests provided by the indentures or obtain the prior consents of the holders of at least a majority in aggregate principal amount of those notes that are not owned by the Company or any of its affiliates. Currently, our borrowings under the credit facility are limited to a total of \$107.3 million, subject to further mandatory scheduled commitment reductions of 2.5% per quarter that commenced December 22, 2008 through September 22, 2009, and 5% for the quarter ending December 31, 2009.

Obligations under the credit agreement are guaranteed by each of our operating subsidiaries. Borrowings under the credit agreement and the subsidiary guarantees are secured by substantially all of our assets and the assets of the subsidiary guarantors. Future subsidiaries will be required to enter into similar pledge agreements and guarantees.

The credit agreement, as amended, likewise requires us to refinance our senior unsecured notes with other unsecured indebtedness by January 2, 2010 on terms and conditions acceptable to our senior secured lenders. If the senior unsecured notes are not refinanced prior to this date, the maturity date of the amounts outstanding under our credit facility will be accelerated to January 2, 2010. In any event, our credit agreement expires March 31, 2010. We are currently evaluating our financing options and are in discussions with our lenders and advisors. Amounts outstanding under the credit facility will be classified to "current obligations" for financial reporting purposes at March 31, 2009.

At December 31, 2008 and 2007, borrowings of \$101.9 million and \$143.4 million, respectively, and letters of credit for approximately \$1.5 million were outstanding under the credit facility. On March 7, 2008, we utilized \$27.6 million of the proceeds from the sale of Binion's to reduce amounts outstanding under the credit facility, and during 2008, we further reduced amounts outstanding under the credit facility by \$13.9 million. The credit agreement also requires mandatory scheduled commitment reductions that will reduce the available borrowing commitment to \$94.4 million by December 31, 2009. During the year ended December 31, 2007, we borrowed \$143.4 million under the credit facility, which included \$50 million paid to the Commonwealth of Pennsylvania on February 21, 2007 for the Presque Isle Downs slot license fee. Upon payment of this fee, the previously issued \$50 million letter of credit was returned and cancelled.

Other Debt Financing Arrangements

In April 1999, Scioto Downs, Inc. entered into a term loan agreement that provides for monthly payments of principal and interest of \$30,025 through September 2013. The effective interest rate is 6.25% per annum. The term loan is collateralized by a first mortgage on Scioto Downs' real property facilities, as well as other personal property, and an assignment of the rents from lease arrangements. At December 31, 2008 and 2007, there was \$1.4 million and \$1.7 million, respectively, outstanding under the term loan. The term loan agreement contains an acceleration clause whereby the lender has the right to declare the loan immediately due and payable if, in the lender's judgment, an event has occurred which is likely to have a material adverse effect on the Company.

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****7. LONG-TERM DEBT AND CAPITAL LEASE OBLIGATIONS (Continued)**

On January 17, 2007, Presque Isle Downs issued a promissory note for \$6.6 million to National City Equipment Finance, a division of National City Commercial Capital, LLC. The funds were used to pay for 457 slot machines that were delivered to Presque Isle Downs in December 2006. Under the terms of the note, we are required to make 36 monthly installments of principal and interest in the amount of \$208,988 beginning on May 17, 2007 through April 17, 2010, with the final installment to include all unpaid principal and interest. Interest on the unpaid principal balance is 7.83% per annum. As of December 31, 2008 and 2007, there was \$3.2 million and \$5.3 million, respectively, outstanding under the promissory note.

On January 17, 2007, Presque Isle Downs issued a promissory note for \$3.6 million to CIT Lending Services Corporation. The funds were used to pay for 252 slot machines that were delivered to Presque Isle Downs in December 2006. Under the terms of the note, interest is payable monthly beginning on February 1, 2007; and principal is payable in 36 monthly installments of \$100,000 beginning on May 1, 2007 through April 1, 2010, with the final installment to include all unpaid principal and interest. Interest on the unpaid principal balance is LIBOR plus 3.25% per annum. On September 24, 2007, 120 slot machines and the related outstanding loan balances of approximately \$1.4 million included in the above financing were transferred to Mountaineer. As of December 31, 2008 and 2007, there was \$0.9 million and \$1.5 million, respectively, outstanding under the promissory note.

On January 23 2007, Presque Isle Downs issued a promissory note for \$1.9 million to Fifth Third Bank. The funds were used to pay for 146 slot machines that were delivered to Presque Isle Downs in December 2006. Under the terms of the note, we are required to make 36 monthly installments of principal and interest in the amount of \$59,331 beginning on May 19, 2007 through April 19, 2010, with the final installment to include all unpaid principal and interest. Interest on the unpaid principal balance is 7.90% per annum. As of December 31, 2008 and 2007, there was \$0.9 million and \$1.5 million, respectively, outstanding under the promissory note.

On January 24, 2007, Presque Isle Downs issued a promissory note for \$3.7 million to Fifth Third Bank. The funds were used to pay for a player tracking system. Under the terms of the note, we are required to make 36 monthly installments of principal and interest in the amount of approximately \$119,000 beginning on May 24, 2007 through April 19, 2010, with the final installment to include all unpaid principal and interest. Interest on the unpaid principal balance is 7.91% per annum. As of December 31, 2008 and 2007, there was \$1.8 million and \$3.0 million, respectively, outstanding under the promissory note.

On February 2, 2007, Presque Isle Downs issued a promissory note for \$9.3 million to PNC Equipment Finance, LLC. The funds were used to pay for 770 slot machines that were delivered to Presque Isle Downs in December 2006. Under the terms of the note, we are required to make 36 monthly installments of principal and interest in the amount of \$298,544 beginning on June 2, 2007 through May 2, 2010, with the final installment to include all unpaid principal and interest. Interest on the unpaid principal balance is 8.08% per annum. As of December 31, 2008 and 2007 there was \$4.5 million and \$7.6 million, respectively, outstanding under the promissory note.

On March 2, 2007, Presque Isle Downs issued a promissory note for \$4.0 million to Fifth Third Bank. The funds were used to pay for 325 slot machines. Under the terms of the note, we are required to make 36 monthly installments of principal and interest in the amount of approximately \$130,000 beginning on July, 2007 through June 2, 2010, with the final installment to include all unpaid principal

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****7. LONG-TERM DEBT AND CAPITAL LEASE OBLIGATIONS (Continued)**

and interest. Interest on the unpaid principal balance is 7.89% per annum. As of December 31, 2008 and 2007 there was \$2.1 million and \$3.4 million, respectively, outstanding under the promissory note.

On August 6, 2007, Mountaineer entered into a capital lease obligation for approximately \$1.8 million to finance the purchase of 137 slot machines. The lease agreement requires repayment in 36 monthly installments of \$57,618, which includes interest at 7.64% per annum. As of December 31, 2008 and 2007, there was \$1.0 million and \$1.6 million, respectively, outstanding under this capital lease obligation.

On September 12, 2007, Mountaineer entered into a capital lease obligation to finance the purchase of surveillance equipment totaling \$4.1 million. Mountaineer requested draws on the capital lease as the surveillance contractor met milestones set forth in the purchase contract. During 2008 and prior to completing the financing, we borrowed \$0.5 million under this capital lease. The financing was completed in June 2008 at terms that included repayment over 36 months with interest at the rate of 6.21%. Until the contractor delivered and installed all of the surveillance equipment, Mountaineer paid only interest at LIBOR plus 2.5%. At December 31, 2008 and 2007, there was \$3.5 million and \$3.6 million, respectively, outstanding under the capital lease.

On September 24, 2007, Mountaineer entered into a promissory note for \$1.4 million to CIT Lending Services Corporation. The funds were used to pay for 120 slot machines transferred from Presque Isle Downs. Under the terms of the note, interest is payable monthly beginning on October 1, 2007; and principal is payable in 31-monthly installments of \$44,977 beginning on October 1, 2007 through April 1, 2010, with the final installment to include all principal and interest. Interest on the unpaid principal balance is LIBOR plus 3.25% per annum. As of December 31, 2008 and 2007, there was \$0.7 million and \$1.3 million, respectively, outstanding under the promissory note.

On October 17, 2007, Presque Isle Downs issued a promissory note for \$1.3 million to PNC Equipment Finance, LLC. The funds were used to pay for 120 slot machines. Under the terms of the note, we are required to make 36 monthly installments of principal and interest in the amount of approximately \$41,000 beginning on November 17, 2007 through October 17, 2010, with the final installment to include all unpaid principal and interest. Interest on the unpaid principal balance is 7.26% per annum. As of December 31, 2008 and 2007, there was \$0.8 million and \$1.3 million, respectively, outstanding under the promissory note.

On November 28, 2007, we re-financed approximately \$1.7 million that was outstanding and payable in November 2007 under a promissory note issued in connection with the acquisition of our corporate airplane in 2002. Under the terms of this note we were required to make 59 monthly payments of \$24,000 commencing January 15, 2008, which included interest at 6.28% per annum and a final payment of \$652,000. The corporate airplane was sold in October 2008 for \$1.8 million, of which \$1.6 million was used to repay the outstanding obligation related to the airplane. As of December 31, 2007 there was \$1.7 million outstanding under the promissory note.

Property, plant and equipment at December 31 includes the following for capitalized leases:

	<u>2008</u>	<u>2007</u>
	<u>(dollars in thousands)</u>	
Equipment	\$ 5,963	\$5,807
Less allowance for depreciation	(1,497)	(311)
	<u>\$ 4,466</u>	<u>\$5,496</u>

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****7. LONG-TERM DEBT AND CAPITAL LEASE OBLIGATIONS (Continued)*****Annual Commitments***

Scheduled principal payments under all long-term debt and capital lease agreements at December 31, 2008 were as follows:

	<u>Long-Term Debt</u>	<u>Capital Leases</u>
	(dollars in thousands)	
2009	\$ 18,543	\$ 2,189
2010	228,807	1,901
2011	342	749
2012	125,325	—
2013	262	—
Thereafter	—	—
Total long-term debt/minimum lease payments	373,279	4,839
Less amount representing interest	—	(350)
Less amount representing discount and premium, net	(158)	—
	373,121	4,489
Less current maturities	(18,543)	(1,955)
Long-term maturities	<u>\$ 354,578</u>	<u>\$ 2,534</u>

8. COMMITMENTS AND CONTINGENCIES***Bond Requirements***

Mountaineer is required to maintain bonds in the aggregate amount of \$800,000 for the benefit of the West Virginia Lottery Commission through June 30, 2009. The bonding requirements have been satisfied via the issuance of surety bonds and a letter of credit. Presque Isle Downs is also required to maintain a slot machine payment bond for the benefit of the Commonwealth of Pennsylvania in the amount of \$1 million. The bonding requirement has been satisfied via the issuance of a surety bond.

Operating and Land Leases

We lease equipment, including some of our slot machines, timing and photo finish equipment, videotape and closed circuit television equipment, and certain parimutuel equipment under operating leases. During each of the three years ended December 31, total rental expense under these leases was as follows: 2008—\$0.9 million; 2007—\$0.7 million; and 2006—\$0.8 million.

Prior to our sale Binion's on March 7, 2008, as discussed in Note 4, we were party to land leases for certain portions of the acreage upon which the property was situated. The leases expired on various dates through 2074, with aggregate current annual rentals of approximately \$6.5 million, which were subject to certain periodic increases; such amounts have been excluded from the future minimum annual lease payments below. However, in connection with our original acquisition of Binion's on March 11, 2004, we provided limited guarantees, which reduce each month as rental payments are made on certain land leases, some of which expired in March 2008, and three of which remained in effect. One of those three (approximately \$0.6 million) expires in March 2009 and the two remaining leases (totaling approximately \$2.0 million) expire in March 2010. However, in connection with the

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****8. COMMITMENTS AND CONTINGENCIES (Continued)**

January 2009 settlement of the post-closing purchase price adjustment with TLC Casino Enterprises, Inc., as discussed in Note 4, we deposited approximately \$1.5 million in an escrow account that will be used to pay a portion of these land lease obligations that have been guaranteed by the Company.

Jackson Harness Raceway is located on property leased from Jackson County, Michigan on the Jackson County Fairgrounds through December 31, 2012. Rentals include certain base amounts, subject to annual increases, as well as percentages of live and simulcasting parimutuel wagering handle. The minimum combined live and simulcast rental is \$85,000. We are also required to make certain capital expenditures during the course of the lease. In connection with Jackson Trotting's closure of racing and simulcast wagering operations on December 4, 2008, as discussed in Note 4, we accrued the remaining obligations with respect to the leases and capital expenditures, which amounted to \$0.6 million at December 31, 2008.

Future Minimum Lease Payments

Future annual minimum payments under all material operating and land leases at December 31, 2008 were as follows:

	<u>Operating</u>	<u>Land</u>
	<u>(dollars in thousands)</u>	
2009	\$ 913	\$ 85
2010	772	85
2011	741	85
2012	412	85
2013	59	—
Thereafter	—	—

Litigation

On May 5, 2006, HHLV Management Company, LLC, an affiliate of Harrah's Entertainment, Inc., served a complaint for breach of contract against Speakeasy Gaming of Fremont, Inc. (and MTR Gaming Group, Inc. as guarantor of the obligations of Speakeasy Gaming of Fremont, Inc.). The complaint alleges that HHLV is entitled to an additional \$5 million of purchase price pursuant to the Purchase Agreement by which Speakeasy Gaming of Fremont acquired Binion's Gambling Hall and Hotel. The Company and Speakeasy Gaming of Fremont, Inc. answered the complaint, generally denying liability and filed counterclaims for breach of contract, breach of duty of good faith and fair dealing, and fraudulent or intentional misrepresentations. By order filed on October 2, 2006, the court dismissed the Company's counterclaims that were based on fraud and bad faith, but preserved the counterclaim based on breach of contract. The parties have agreed in principal to settle the matter for \$1.75 million with payment to be made upon settlement of all other accounts between the parties. This amount has been accrued in our consolidated balance sheet as of December 31, 2008 and 2007.

On January 17, 2006, Gary Birzer, a jockey who was injured during a race at Mountaineer in July 2004, filed a first amended complaint in which he alleges that Mountaineer was negligent in its design, construction and maintenance of the racetrack as well as in its administration of races. Mr. Birzer seeks medical expenses to date of \$550,000, future medical expenses, unspecified lost wages and other

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****8. COMMITMENTS AND CONTINGENCIES (Continued)**

damages resulting from his injuries. Mr. Birzer seeks in excess of \$10 million in damages. Mr. Birzer's wife seeks \$2 million for loss of consortium. Mountaineer has answered the complaint, denying any negligence or wrongdoing and further alleging that Mr. Birzer's injuries, to the extent the result of negligence, resulted from Mr. Birzer's own negligence or the negligence of others. Though the complaint is unclear as to the basis for liability against the Company, it appears that the Company was named a defendant because it is Mountaineer's parent company and allegedly conspired with the other defendants to cause Mr. Birzer's injuries. We believe, but cannot assure, that we have sufficient liability insurance coverage for these claims.

During 2008, Presque Isle Downs was required to replace certain equipment components of the Presque Isle Downs surveillance system that were defective and malfunctioning at a cost of \$1.9 million. This resulted in the write-off of approximately \$1.5 million relating to the net book value of the equipment being replaced. We are pursuing legal action to recover the cost of replacing the equipment.

We are also party to various lawsuits, which have arisen in the normal course of our business. The liability arising from unfavorable outcomes of those lawsuits is not expected to have a material impact on our consolidated financial condition or results of operations.

Presque Isle Downs

We incurred approximately \$294 million in costs to build Presque Isle Downs, which includes land acquisition and construction costs, gaming and operations equipment, licensing fee, project opening expenses and all other costs associated with the project. These costs are net of \$3.2 million received from the Pennsylvania Horsemen's Benevolent and Protective Association, Inc., which represents 50% of the excess costs incurred to install a synthetic track racing surface above that of a conventional racing surface. However, these costs do not reflect anticipated proceeds from the sale of excess real property holdings or any contributions from the local economic development authority that we believe were contemplated by Pennsylvania's gaming statute.

On February 21, 2007, Presque Isle Downs paid a \$50 million slot license fee to the Commonwealth of Pennsylvania. This amount is included in other intangibles in the consolidated balance sheets. Upon payment of this fee, the previously issued \$50 million letter of credit was returned and cancelled. In addition, upon commencement of slot operations we were required to make deposits in the aggregate amount of \$5.8 million to establish accounts with the Commonwealth of Pennsylvania.

On March 13, 2007, the Pennsylvania Gaming Control Board advised Presque Isle Downs that it would receive a one time assessment of \$0.8 million required of each slot machine licensee after commencement of gaming operations. These funds are a prepayment toward the total borrowings of the Pennsylvania Gaming Control Board, Pennsylvania Department of Revenue and the Pennsylvania State Police (collectively "the borrowers"), required to fund the costs incurred as a result of gaming operations. Once all of Pennsylvania's fourteen slot machine licensees are operational, the Pennsylvania Department of Revenue will assess all licensees, including Presque Isle Downs, their proportionate share of the total borrowings incurred by the borrowers, as a result of gaming operations. The amount to be assessed to Presque Isle Downs is unknown at this time but is likely to exceed the \$0.8 million previously advanced.

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****8. COMMITMENTS AND CONTINGENCIES (Continued)**

On October 23, 2006, we entered into an agreement to buy out a party to a 2001 agreement, which had allocated 3% of EBITDA from Presque Isle Downs to a development consultant, for \$4.2 million. Of this amount, \$100,000 was paid on October 27, 2006 and \$4.1 million was paid on February 27, 2007.

In connection with planned infrastructure improvements at Presque Isle Downs, we were required to establish an escrow deposit in 2006 for the benefit of the Pennsylvania Department of Transportation of approximately \$5 million. Approximately \$4.0 million was returned to us through 2008. At December 31, 2008, the deposit amounted to approximately \$1.0 million, which will be fully returned to us by November 2009.

In March 2002, we entered into a loan agreement whereby we advanced \$2 million to a third-party for the purpose of acquiring real property, known as the Greenshingle site, as an alternative site to build Presque Isle Downs. In February 2007, the title to the property was transferred to Presque Isle Downs in full satisfaction of the amounts outstanding under the note.

We have entered into an agreement with the Summit Township Industrial and Economic Development Authority ("STIEDA") pursuant to which the Authority has agreed to apply to Erie County for certain grants contemplated by the gaming act, which would be used to fund, initially, up to \$14.4 million of agreed upon on- and off-site infrastructure improvements. STIEDA has submitted applications to Erie County for the funds subject to the agreement. However, to date such funds have not been released and STIEDA has filed litigation against Erie County to force it to make distributions to fund the submitted grant requests. Erie County had taken the position that the gaming act did not permit or require distributions to municipalities, such as Summit Township, to defray infrastructure costs incident to hosting a casino. On August 4, 2008, the Erie County Court of Common Pleas ruled in favor of STIEDA and ordered Erie County to distribute certain revenue collected from casino operations to fund proper grant requests. Specifically, the court ruled that the County, through its revenue authority must distribute "restricted funds," as defined in the Gaming Act "to fund the costs of human services, infrastructure improvements, facilities, emergency services, or health and public safety expenses associated solely with the operation of Presque Isle Downs & Casino." STIEDA submitted the grant request to the newly formed Erie County Gaming Revenue Authority ("ECGRA"), seeking reimbursement for such qualifying infrastructure improvements as roads and bridges incident to the operation of Presque Isle Downs. In March 2009, based on the ECGRA's conclusion that STIEDA's grant request did not satisfy the Court's standard, Erie County adopted an ordinance for the distribution of the restricted funds that effectively denied STIEDA's grant application. We believe that the County acted arbitrarily and in violation of the Court's August 4, 2008 order. We are currently evaluating our options with respect to further pursuit of these reimbursements.

In October 2004, we acquired 229 acres of real property, known as the International Paper site, as an alternative site to build Presque Isle Downs. In October 2005, we sold all but approximately 24 acres of this site for \$4.0 million to the Greater Erie Industrial Development Corporation, a private, not-for-profit entity that is managed by the municipality (the "GEIDC"). Although the sales agreement was subject to, among other things, our release (by International Paper Company and the Pennsylvania Department of Environmental Protection (the "PaDEP") from our obligations under the consent order (as discussed below), we waived this closing condition.

In connection with the acquisition of the International Paper site, we entered into a consent order with the PaDEP regarding a proposed environmental remediation plan for the site. The proposed plan

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****8. COMMITMENTS AND CONTINGENCIES (Continued)**

was based upon a "baseline environmental report" and it was estimated that such remediation would cost approximately \$3.0 million. The GEIDC assumed primary responsibility for the obligations under the consent order relating to the property they acquired. The GEIDC has agreed to indemnify us from any breach by the GEIDC of its obligation under the consent order. However, we have been advised by the PaDEP that we have not been released from liability and responsibility under the consent order. The GEIDC has remediated a portion of the site and PaDEP has approved a plan for the remediation of the remainder of the site. A revised estimate of the remaining remediation costs cannot be determined at this time since such a determination will be dependent upon the remaining development activities of the GEIDC.

We have been advised by the GEIDC that the GEIDC claims that Presque Isle Downs is obligated to supply approximately 50,500 cubic yards of "clean fill dirt" for the parcel of land of the International Paper site that was previously sold to the GEIDC. Presque Isle Downs has taken the position that it has no such obligation because (i) any such agreement contained in the purchase agreement was merged into the deed delivered at the time of the sale; and (ii) the GEIDC had expressly waived this requirement.

Agreements with Horsemen and Parimutuel Clerks

The Federal Interstate Horse Racing Act, the state racing laws in West Virginia, Ohio and Pennsylvania require that, in order to simulcast races, we have written agreements with the horse owners and trainers at those racetracks. In addition, in order to operate slot machines in West Virginia, we are required to enter into written agreements regarding the proceeds of the slot machines (a "proceeds agreement") with a representative of a majority of the horse owners and trainers and with a representative of a majority of the parimutuel clerks. In Pennsylvania, we must have an agreement with the representative of the horse owners. We have the requisite agreements in place with the Mountaineer Horsemen until December 31, 2009. With respect to the Mountaineer parimutuel clerks, we have a labor agreement in force until November 30, 2009, and a proceeds agreement until April 14, 2010. We are required to have a proceeds agreement in effect on July 1 of each year with the horsemen and the parimutuel clerks as a condition to renewal of our video lottery license for such year. If the requisite proceeds agreement is not in place as of July 1 of a particular year, Mountaineer's application for renewal of its video lottery license could be denied, in which case Mountaineer would not be permitted to operate its slot machines. Additionally, the renewal of the video lottery license is a prerequisite to the renewal of the table games license. With respect to the Scioto horsemen, the agreement with the Horsemen's Benevolent & Protective Association is effective until November 29, 2012, and the agreement with the Ohio Harness Horsemen's Association provides for automatic annual renewals. Presque Isle Downs has the requisite agreement in place with the Pennsylvania Horsemen's Benevolent and Protective Association until March 31, 2013, with automatic two-year renewals unless either party provides written notice of termination at least ninety (90) days prior to the scheduled renewal date. With the exception of the Mountaineer and Presque Isle Downs horsemen's agreements and the agreement between Mountaineer and the parimutuel clerks' union described above, each of the agreements referred to in this paragraph may be terminated upon written notice by either party.

Officer Employment, Consulting and Deferred Compensation Agreements

On September 19, 2008, we appointed Robert F. Griffin as the Company's new President and Chief Executive Officer and on September 23, 2008, entered into a two-year employment agreement

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****8. COMMITMENTS AND CONTINGENCIES (Continued)**

that commenced November 1, 2008. The agreement provides for an annual base salary of \$550,000 and certain other benefits. Pursuant to the agreement, Mr. Griffin is also entitled to annual incentive compensation of no less than 30% of his base compensation. The agreement also provides for the grant of options to purchase 150,000 shares of our common stock, subject to certain vesting and other provisions. In the event of termination of employment in connection with a change of control as defined in the agreement, Mr. Griffin would receive a severance payment as follows: (i) an amount equal to two times Mr. Griffin's then applicable base compensation, (ii) an amount equal to the highest amount of annual incentive compensation paid to Mr. Griffin with respect to either the first or second full calendar year immediately preceding the effective date of the termination (or as otherwise stipulated in the agreement); and (iii) an additional monthly amount so that Mr. Griffin shall be able to receive certain health benefits coverage as provided by the agreement. The agreement also provides that upon a change in control all unvested stock options shall vest and all stock options that must be exercised shall be exercisable in accordance with the terms of the applicable Non-Qualified Stock Option Agreement.

On October 15, 2008, we entered into the second amendment of the employment agreement with Edson R. Arneault pursuant to which Mr. Arneault's employment agreement expired on October 31, 2008, instead of December 31, 2008, as originally provided, and Mr. Arneault ceased to be employed as the Company's President and Chief Executive Officer on October 31, 2008. The amendment provides that Mr. Arneault will receive the following consideration in lieu of any and all payments that would otherwise become due and payable to him under his employment agreement (except as otherwise provided in the amendment): (i) the corporate residence and associated real property and furnishings in New Cumberland, West Virginia; (ii) Mr. Arneault's office furnishings at the Company's headquarters, (iii) a bonus payment of \$400,000 less applicable taxes and authorized deductions; (iv) certain other compensation and expense reimbursement pursuant to the employment agreement through the date of termination; and (v) deferred amounts of approximately \$11.5 million held in a rabbi trust with earnings on such amounts. This amount is included in our consolidated balance sheet as "Assets held for deferred compensation" and the related obligation has been accrued in our consolidated balance sheet as of December 31, 2008.

On October 15, 2008, we also entered into a consulting agreement with Mr. Arneault effective November 1, 2008, and continuing for a period of 30 months during which Mr. Arneault will assist with the transition to Mr. Griffin, who became President and Chief Executive Officer on November 1, 2008, and provide other services set forth in the consulting agreement. The consulting agreement provides that Mr. Arneault will provide up to 400 hours of his time per year and we will pay Mr. Arneault a consulting fee of \$512,000 per year and also provide for the payment of certain expenses incurred by Mr. Arneault in connection with his providing services to the Company. During the 30-month period, Mr. Arneault will not, directly or indirectly, own, operate, join, control, participate in or be connected as an officer, director, employee, partner, stockholder, consultant or otherwise, any gaming business within 150 miles of any facility currently owned or leased by the Company.

On October 19, 2006, we also entered into an amendment to the deferred compensation agreement with Mr. Arneault dated as of January 1, 1999. The amendment provides that if Mr. Arneault's employment is terminated other than for cause or good reason, as defined, or if the new employment agreement expires, we will pay the premiums for insurance policies underlying the deferred compensation agreement until Mr. Arneault reaches the age of sixty-five (65). Pursuant to the terms of this agreement, we previously purchased a split-dollar life insurance policy on Mr. Arneault's

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****8. COMMITMENTS AND CONTINGENCIES (Continued)**

life (face amount of \$4.7 million and annual premium of \$150,000). The Company is the owner and beneficiary of the policy. As a result of an amendment to the deferred compensation agreement dated May 4, 2005, we no longer have a liability to Mr. Arneault under the aforementioned agreement.

Other Employment Agreements and Deferred Compensation Agreements

We entered into various employment agreements during 2008 and 2007 with other employees. We also entered into an additional deferred compensation agreement dated June 1999 whereby we purchased life insurance on a former employee's life (aggregate face amount of \$856,000 and aggregate annual premiums of \$37,000). The Company is the owner and beneficiary of the policy. However, on March 10, 2009, the Company and the former employee agreed to rescind the agreement.

9. RETIREMENT PLANS

Mountaineer has a qualified defined contribution plan covering substantially all of its employees. The plan was ratified retroactively on March 18, 1994 by West Virginia legislation. Plan contributions are based on $\frac{1}{4}\%$ of the race track and simulcast wagering handles, and approximately $\frac{1}{2}\%$ of the net win from gaming operations beginning March 18, 1994. Effective in July 2005, West Virginia legislation increased the portion of the racetracks' net win that is contributed into the Plan from $\frac{1}{2}\%$ to 1%, which is applied to the net win until the racetrack reaches its Excess Net Terminal Income threshold. For Mountaineer, the threshold is fixed at approximately \$160.0 million. Contributions to the plan during each of the three years ended December 31 were as follows: 2008—\$1.7 million; 2007—\$1.9 million; and 2006—\$2.2 million.

Scioto Downs sponsors a noncontributory defined-benefit plan covering all full-time employees meeting certain age and service requirements. On May 31, 2001, the plan was amended to freeze eligibility, accrual of years of service and benefits. Scioto Downs' pension income during each of the three years ended December 31 was as follows: 2008—\$53,000; 2007—\$50,000; and 2006—\$42,000. As of December 31, 2008, the fair value of the plan assets were \$1.0 million and benefit obligations were \$1.1 million, resulting in an under-funded status approximating \$0.1 million. As of December 31, 2007 and 2006, the funded status excess was \$0.4 million. We did not make cash contributions to the Scioto Downs pension plan during any of the three years ended December 31, 2008.

Scioto Downs also has a 401(k) savings plan covering substantially all full-time employees. During each of the three years ended December 31, Scioto Downs expensed matching contributions as follows: 2008—\$34,000; 2007—\$39,000; and 2006—\$49,000.

In December 2008, we established the MTR Gaming Group, Inc. 401(k) plan. The Mountaineer defined contribution plan and the Scioto 401(k) plan were merged into the new plan. Additionally, the plan provides 401(k) participation to Presque Isle Downs employees. There were no Company matching contributions during 2008.

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****10. OTHER ACCRUED LIABILITIES**

Other accrued liabilities consisted of the following at December 31:

	<u>2008</u>	<u>2007</u>
	<u>(dollars in thousands)</u>	
HHLV Management Company, LLC.	\$ 1,750	\$ 1,750
TLC Casino Enterprises, Inc.	1,544	—
Other	11,386	9,825
	<u>\$14,680</u>	<u>\$11,575</u>

11. ADVERTISING COSTS

Advertising costs during each of the three years ended December 31 were as follows: 2008—\$15.9 million; 2007—\$17.6 million; and 2006—\$8.7 million. Advertising costs are reduced by advertising grants Mountaineer received from the State of West Virginia for each of the three years ended December 31 as follows: 2008—\$0.9 million; 2007—\$1.4 million; and 2006—\$1.0 million. In addition, Presque Isle Downs received \$88,000 from the Pennsylvania Horsemen's Benevolent & Protective Association during 2008 as reimbursement of advertising costs.

12. SHAREHOLDERS' EQUITY*Limitations on Dividends*

We are prohibited from paying any dividends without our lenders' consent. We currently intend to retain all earnings, if any, to finance and expand our operations.

Common Stock

During 2007, we repurchased 85,000 shares of its common stock in market transactions pursuant to SEC Rule 10b-18 for \$654,000. These shares were canceled and returned to authorized but unissued status upon their repurchase. There were no stock repurchases during 2008 and 2006.

Stock Options

Total stock compensation expense recognized during each of the three years ended December 31 was as follows: 2008—\$1,296,000; 2007—\$1,046,000; and 2006—\$157,000. The total compensation cost related to nonvested awards not yet recognized at December 31 was as follows: 2008—\$349,000; 2007—\$1,741,000; and 2006—\$204,000. These costs are expected to be recognized over the remaining vesting periods which will not exceed two years for 2008 and 2007 and three years for 2006.

There were no options exercised during 2008. The aggregate intrinsic value of options (the amount by which the market price of the stock on the date of exercise exceeded the market price of the stock on the date of grant) exercised during 2007 and 2006 was \$245,000 and \$224,000, respectively. Shares issued for stock option exercises are issued from authorized, unissued shares.

Net cash proceeds from the exercise of stock options were \$491,000 and \$409,000 for 2007 and 2006, respectively. The income tax benefit realized from stock options exercised totaled \$54,000 and \$79,000, respectively, for the same periods.

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****12. SHAREHOLDERS' EQUITY (Continued)**

Stock option activity during each of the three years ended December 31 is summarized as follows:

	Number of Option Shares	Exercise Price Range Per Share	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Balance, December 31, 2005	1,250,384	\$2.50 - \$15.00	\$ 6.66		
Granted	40,000	\$9.58	\$ 9.58		
Canceled	(55,000)	\$7.30 - \$11.40	\$ 8.24		
Exercised	(60,850)	\$2.50 - \$9.02	\$ 6.72		
Expired	(25,000)	\$10.85	\$ 10.85		
Balance, December 31, 2006	1,149,534	\$2.50 - \$15.00	\$ 6.59		
Granted	346,000	\$11.41 - \$16.27	\$ 14.73		
Canceled	(50,000)	\$7.30 - \$9.85	\$ 8.58		
Exercised	(54,734)	\$7.30 - \$13.60	\$ 8.96		
Expired	—	\$—	\$ —		
Balance, December 31, 2007	1,390,800	\$2.50 - \$16.27	\$ 8.45		
Granted	180,000	\$3.71-\$5.61	\$ 4.03		
Forfeited	(62,000)	\$11.41-\$16.27	\$ 12.49		
Canceled	—	\$—	\$ —		
Exercised	—	\$—	\$ —		
Expired	(25,000)	\$8.00	\$ 8.00		
Balance, December 31, 2008	1,483,800	\$2.50 - \$16.27	\$ 7.75	4.97	\$ —
Exercisable, December 31, 2008	1,079,800	\$2.50 - \$15.00	\$ 6.17	3.58	\$ —

On September 19, 2008, the Compensation Committee of our Board of Directors granted, in connection with execution of an employment agreement, options to purchase a total of 150,000 shares of our common stock at a purchase price of \$3.71, the NASDAQ Official Close Price on that date. The options have a term of ten years, 50,000 of which vested on date of grant and 50,000 of which vest on each of the first and second anniversary dates of the employment agreement, which was effective November 1, 2008.

On May 15, 2008, the Compensation Committee of our Board of Directors granted to one employee options to purchase a total of 30,000 shares of our common stock at a purchase price of \$5.61 per share, the NASDAQ Official Close Price on that date. The options have a term of ten years and were fully vested on date of grant.

On April 27, 2007, the Compensation Committee of our Board of Directors granted to eighteen employees options to purchase a total of 133,000 shares of common stock at a purchase price of \$16.27 per share, the NASDAQ Official Close Price on that date. The options have a term of ten years, some of which vest two years after the date of grant and some of which vest on January 1, 2009.

On April 19, 2007, our Board of Directors adopted, and on June 19, 2007 our shareholders ratified, the Company's 2007 Stock Incentive Plan. The Board has reserved 400,000 shares of common stock for issuance pursuant to the exercise of options issued under the Plan. On June 26, 2007,

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****12. SHAREHOLDERS' EQUITY (Continued)**

pursuant to the Plan, the Compensation Committee of our Board of Directors granted to eighteen employees options to purchase a total of 143,000 shares of common stock at a purchase price of \$14.79 per share, the NASDAQ Official Close Price on that date. The options have a term of ten years, some of which vest two years after the date of grant and some of which vest on January 1, 2009.

In addition, we granted nonqualified options to purchase 70,000 and 40,000 shares of our common stock to employees pursuant to employment agreements during 2007 and 2006, respectively.

The weighted average grant date fair value of the 180,000, 346,000 and 40,000 options granted during 2008, 2007 and 2006 was \$318,000, \$2,583,000 and \$222,000, respectively. The fair value of the 90,000, 10,000 and 63,343 options vested during 2008, 2007 and 2006 was \$202,000, \$52,000 and \$348,000, respectively.

The fair value of each stock option granted is estimated on the date of the grant using the Black-Scholes option-pricing model with the following weighted-average assumptions used for grants for each of the years ended December 31 as follows:

	2008	2007	2006
Expected dividend yield	N/A	N/A	N/A
Expected stock price volatility	50.7%	46.8%	54.1%
Risk-free interest rate	3.55%	4.74%	4.52%
Expected life of options	7.71 years	5.89 years	6.5 years

13. INCOME TAXES

The income tax (benefit) provision attributable to continuing and discontinued operations during each of the three years ended December 31 is as follows:

	2008	2007	2006
	(dollars in thousands)		
Continuing operations	\$(3,197)	\$(2,020)	\$ 6,656
Discontinued operations	(1,428)	(2,966)	(1,553)
	<u>\$(4,625)</u>	<u>\$(4,986)</u>	<u>\$ 5,103</u>

The income tax (benefit) provision for income taxes attributable to income (loss) from continuing operations before income taxes during each of the three years ended December 31 is summarized as follows:

	2008	2007	2006
	(dollars in thousands)		
Current Federal	\$(6,153)	\$ 833	\$11,638
Deferred Federal	2,956	(2,853)	(4,982)
Provision for income taxes	<u>\$(3,197)</u>	<u>\$(2,020)</u>	<u>\$ 6,656</u>

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****13. INCOME TAXES (Continued)**

A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows:

	<u>2008</u>	<u>2007</u>
	<u>(dollars in thousands)</u>	
Balance January 1, 2008	\$ 418	\$ 465
Reductions related to a lapse of applicable statute of limitations	(134)	(47)
Balance December 31, 2008	<u>\$ 284</u>	<u>\$ 418</u>

Effective January 1, 2007, we adopted FASB Interpretation No. 48, *Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement No. 109* ("FIN 48"). FIN 48 clarifies the accounting for income taxes by prescribing the minimum recognition threshold an uncertain tax position is required to meet before tax benefits associated with such uncertain tax positions are recognized in the financial statements. FIN 48 also provides guidance on derecognition, measurement, classification, interest and penalties, accounting in interim periods, disclosure and transition. FIN 48 also requires that amounts recognized in the balance sheet related to uncertain tax positions be classified as a current or noncurrent liability, based upon the expected timing of the payment to a taxing authority.

As a result of the implementation of FIN 48, we recognized an increase in our accrued income tax liabilities of \$986,000, which was accounted for as a \$404,000 reduction to the January 1, 2007 balance of retained earnings and a \$582,000 increase in deferred tax assets. Included in the increase in accrued income tax liabilities is approximately \$602,000 of accrued interest. The liability for unrecognized tax benefits was approximately \$465,000 as of January 1, 2007. The amount of unrecognized tax benefits that, if recognized, would affect the effective tax rate is approximately \$94,000. We do not expect a significant increase or decrease to the total amount of unrecognized tax benefits within the next twelve months.

A reconciliation of the expected statutory federal income tax (benefit) provision to the provision for income taxes during each of the years ended December 31 was as follows:

	<u>2008</u>	<u>2007</u>	<u>2006</u>
Provision for income taxes at a federal statutory rate	35.0%	35.0%	35.0%
Increase (reduction) in income taxes resulting from:			
Permanent items not deductible for income tax purposes	(3.7)	(7.8)	13.8
Interest income (expense) (net of tax)	0.4	(2.7)	—
Valuation allowance	(15.6)	—	—
Other	1.2	0.6	(0.9)
Provision for income taxes	<u>17.3%</u>	<u>25.1%</u>	<u>47.9%</u>

The 2006 permanent items not deductible for income tax purposes resulted primarily from the payments of nondeductible expenses in the amount of \$3.1 million related to our support of a slot referendum in Ohio. In addition, we determined that certain tax deductions associated with the exercise of employee stock options may be subject to limitation and not be deductible under Internal Revenue Code Section 162(m). Accordingly, we recorded additional federal income tax liability of \$3.0 million

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****13. INCOME TAXES (Continued)**

and correspondingly reduced additional paid-in capital for the tax benefits during the year ended December 31, 2006.

Significant components of our net deferred taxes at December 31 were as follows:

	<u>2008</u>	<u>2007</u>
	<u>(dollars in thousands)</u>	
Deferred tax assets:		
Accrued liabilities	\$ 863	\$ 718
Deferred compensation	4,430	4,090
Equity investment losses	2,879	—
Net operating loss carryforward	3,655	1,601
Deferred expenses	1,765	2,425
Stock based compensation	875	421
Interest	25	327
Other	543	450
	<u>15,035</u>	<u>10,032</u>
Valuation allowance	<u>(4,191)</u>	<u>(781)</u>
Deferred tax assets	<u>\$ 10,844</u>	<u>\$ 9,251</u>
Deferred tax liabilities:		
Deferred expenses	\$ (1,417)	\$ —
Prepaid pension	—	(137)
Basis difference in property and equipment	(2,292)	(2,423)
Tax depreciation in excess of book	(9,382)	(6,160)
Deferred tax liabilities	<u>\$(13,091)</u>	<u>\$ (8,720)</u>

A valuation allowance of \$2.9 million was provided at December 31, 2008 for federal deferred tax benefits related to certain impairment losses for which we were not able to recognize a tax benefit. In addition, a valuation allowance of \$491,000 and \$781,000 was provided at December 31, 2008 and 2007, respectively for state deferred tax benefits. During 2008 and 2007 we recognized interest income and expense related to uncertain tax positions of approximately \$251,000 and \$217,000, respectively.

At December 31, 2008, we have, for federal income tax purposes, approximately \$59,000 in alternative minimum tax credit carryforwards and approximately \$3.0 million in net operating loss carryforwards. The net operating loss carryforwards expire over the years 2010 through 2022. The use of the net operating loss carryforwards will be limited by Section 382 of the Internal Revenue Code. The alternative minimum tax credit can be carried forward indefinitely. We have state net operating loss carryforwards of \$25.9 million that begin to expire in 2024. We are no longer subject to federal and state income tax examinations for years before 2005.

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****14. QUARTERLY DATA (UNAUDITED)**

	Quarter Ended			
	March 31	June 30	September 30	December 31(1)
	(dollars in thousands)			
2008:				
Revenues	\$ 114,674	\$ 127,989	\$ 132,927	\$ 103,182
Less promotional allowances	(1,687)	(2,245)	(2,145)	(1,844)
Net revenues	112,987	125,744	130,782	101,338
Operating expenses	104,196	115,207	115,539	97,744
Operating income	8,791	10,537	15,243	3,594
Loss from continuing operations(2)	(2,628)	(2,219)	(6,271)	(4,160)
Net loss	\$ (2,626)	\$ (2,308)	\$ (8,240)	\$ (4,537)
Basic net loss per common share				
Loss from continuing operations	\$ (0.10)	\$ (0.08)	\$ (0.23)	\$ (0.15)
Net loss	\$ (0.10)	\$ (0.08)	\$ (0.30)	\$ (0.17)
Diluted net loss per common share				
Loss from continuing operations	\$ (0.10)	\$ (0.08)	\$ (0.23)	\$ (0.15)
Net loss	\$ (0.10)	\$ (0.08)	\$ (0.30)	\$ (0.17)
Weighted average shares outstanding—basic	27,475,260	27,475,260	27,475,260	27,475,260
Weighted average shares outstanding—diluted	27,475,260	27,475,260	27,475,260	27,475,260

	Quarter Ended			
	March 31(3)	June 30	September 30	December 31
	(dollars in thousands)			
2007:				
Revenues	\$ 89,404	\$ 114,765	\$ 117,107	\$ 100,538
Less promotional allowances	(1,135)	(1,439)	(1,732)	(1,662)
Net revenues	88,269	113,326	115,375	98,876
Operating expenses	81,370	103,768	105,344	98,786
Operating income	6,899	9,558	10,031	90
Income (loss) from continuing operations(2)	428	389	1,006	(7,691)
Net income (loss)	\$ 559	\$ (502)	\$ (2,843)	\$ (8,573)
Basic net income per common share				
Income (loss) from continuing operations	\$ 0.02	\$ 0.01	\$ 0.04	\$ (0.28)
Net income (loss)	\$ 0.02	\$ (0.02)	\$ (0.10)	\$ (0.31)
Diluted net income per common share				
Income (loss) from continuing operations	\$ 0.02	\$ 0.01	\$ 0.04	\$ (0.28)
Net income (loss)	\$ 0.02	\$ (0.02)	\$ (0.10)	\$ (0.31)
Weighted average shares outstanding—basic	27,523,289	27,544,955	27,559,076	27,523,584
Weighted average shares outstanding—diluted	27,864,146	27,892,529	27,867,281	27,523,584

- (1) Operating income for the quarter ended December 31, 2008 includes a \$3.0 million net loss on the disposal of property. See Note 4.

Table of Contents**MTR GAMING GROUP, INC.****NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)****14. QUARTERLY DATA (UNAUDITED) (Continued)**

- (2) Continuing operations exclude the operating results for Binion's Gambling Hall & Hotel, the Ramada Inn and Speedway Casino and Jackson Harness Raceway; quarterly information for 2007 has been reclassified to conform with the discontinued operations presentation of Speedway and Jackson in 2008.
- (3) Presque Isle Downs commenced operations on February 28, 2007.

Common Stock Prices

	Per Quarter			
	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
2008:				
High	\$ 7.62	\$ 7.70	\$ 5.24	\$ 4.25
Low	4.95	4.67	2.80	1.44
2007:				
High	\$ 13.95	\$ 16.88	\$ 16.12	\$ 9.58
Low	11.08	12.82	8.91	5.92

F-40

Table of Contents**MTR GAMING GROUP, INC.****SCHEDULE II—VALUATION AND QUALIFYING ACCOUNTS**

<u>Column A</u>	<u>Column B Balance at Beginning of Period(3)</u>	<u>Column C Additions(1)(3)</u>	<u>Column D Deductions(2)(3)</u>	<u>Column E Balance at End of Period(3)</u>
Year ended December 31, 2008:				
Allowance for doubtful accounts receivable	\$ 135,000	\$ 111,000	\$ 121,000	\$ 125,000
Year ended December 31, 2007:				
Allowance for doubtful accounts receivable	\$ 129,000	\$ 230,000	\$ 225,000	\$ 135,000
Year ended December 31, 2006:				
Allowance for doubtful accounts receivable	\$ 121,000	\$ 164,000	\$ 156,000	\$ 129,000

(1) Amounts charged to costs and expenses.

(2) Uncollectible accounts written off, net of recoveries.

(3) Includes discontinued operations—Binion's Gambling Hall & Hotel, the Ramada Inn and Speedway Casino and Jackson Harness Raceway

F-41

Table of Contents**EXHIBIT INDEX**

EXHIBIT NO.	ITEM TITLE
3.1	Restated Certificate of Incorporation for Winner's Entertainment, Inc. dated August, 17, 1993 (incorporated by reference to our Form 10-K for the fiscal year ended December 31, 1993).
3.2	Amended By Laws (filed herewith).
3.3	Certificate of Amendment of Restated Certificate of Incorporation of Winner's Entertainment, Inc. dated October 10, 1996 (incorporated by reference to our report on Form 8-K filed November 1, 1996).
4.1	Excerpt from Common Stock Certificates (incorporated by reference to our report on Form 10-K filed March 30, 2001).
4.2	Indenture dated March 25, 2003 entered into by the Company, the Guarantors (as defined in the Indenture) and Wells Fargo Bank Minnesota, National Association, as Trustee [exhibits and annexes omitted] (incorporated by reference to our report on Form 10-K filed March 31, 2003).
4.3	Supplemental Indenture dated as of July 31, 2003 by and between Scioto Downs, Inc., as Additional Guarantor, and Wells Fargo Bank Minnesota, N.A., as Trustee (incorporated by reference to Exhibit 4.3 of our registration statement on Form S-4 (Amendment No. 1), filed August 6, 2003 (Registration No. 333-105528)).
4.4	Supplemental Indenture dated as of April 23, 2004, by and between Speakeasy Gaming of Fremont, Inc., as Additional Guarantor, and Wells Fargo Bank, N.A., as Trustee (incorporated by reference to our report on Form 10-Q for the quarter ended March 31, 2004).
4.5	Supplemental Indenture dated as of January 11, 2006 by and between Jackson Racing, Inc., as Additional Guarantor, and Wells Fargo Bank, N.A., as Trustee (incorporated by reference to our report on Form 10-K filed March 29, 2006).
4.6	Supplemental Indenture dated May 12, 2006, by and between the Company, certain of its wholly-owned subsidiaries (as guarantors), and Wells Fargo Bank, N.A. (incorporated by reference to our report on Form 10-Q for the quarter ended June 30, 2006).
4.7	Supplemental Indenture dated May 17, 2006, by and between the Company, certain of its wholly-owned subsidiaries (as guarantors) and Wells Fargo Bank, N.A. (incorporated by reference to our report on Form 10-Q for the quarter ended June 30, 2006).
4.8	Indenture dated May 25, 2006, by and between the Company, certain of its wholly-owned subsidiaries (as guarantors) and Wells Fargo Bank, N.A., including forms of the Note and the Guarantee (incorporated by reference to our report on Form 8-K filed May 26, 2006).
4.9	Supplemental Indenture to Indenture dated March 25, 2003 by and among the Company, certain wholly-owned subsidiaries of the Company (as Guarantors) and Wells Fargo Bank, N.A. (as Trustee) dated June 1, 2007 (incorporated by reference to our report on Form 8-K filed June 4, 2007).
4.10	Supplemental Indenture to Indenture dated May 25, 2006 by and among the Company, certain wholly-owned subsidiaries of the Company (as Guarantors) and Wells Fargo Bank, N.A. (as Trustee) dated June 1, 2007 (incorporated by reference to our report on Form 8-K filed June 4, 2007).

Table of Contents

EXHIBIT NO.	ITEM TITLE
4.11	Supplemental Indenture dated June 15, 2007, by and between the Company, certain of its wholly-owned subsidiaries (as guarantors) and Wells Fargo Bank, N.A. supplementing the Indenture dated as of March 25, 2003 (incorporated by reference to our report on Form 8-K filed June 18, 2007).
4.12	Supplemental Indenture dated June 15, 2007, by and between the Company, certain of its wholly-owned subsidiaries (as guarantors) and Wells Fargo Bank, N.A. supplementing the Indenture dated as of May 25, 2006 (incorporated by reference to our report on Form 8-K filed June 18, 2007).
4.13	Supplemental Indenture dated March 7, 2008, by and between the Company, certain of its wholly-owned subsidiaries (as guarantors) and Wells Fargo Bank, N.A. supplementing the Indenture dated as of March 25, 2003 (incorporated by reference to our report on Form 10-K filed April 13, 2008).
4.14	Supplemental Indenture dated March 7, 2008, by and between the Company, certain of its wholly-owned subsidiaries (as guarantors) and Wells Fargo Bank, N.A. supplementing the Indenture dated as of May 25, 2006 (incorporated by reference to our report on Form 10-K filed April 13, 2008).
4.15	Instrument of Resignation, Appointment and Acceptance dated as of June 26, 2008, executed by the Company, Wells Fargo Bank, National Association, and Wilmington Trust Company (incorporated by reference to our report on Form 10-Q filed August 8, 2008).
10.1	MTR Gaming Group, Inc. 2002 Employee Stock Incentive Plan (incorporated by reference to our report on Form 10-Q for the quarter ended September 30, 2002).
10.2	Agreement dated November 1, 2008 between Mountaineer Park, Inc. and Racetrack Employees Union Local No. 101 [Schedules omitted] (filed herewith).
10.3	Member Control Agreement of North Metro Harness Initiative, LLC dated as of June 8, 2004 by and among Southwest Casino and Hotel Corp., MTR-Harness, LLC, and MTR Gaming Group, Inc. (incorporated by reference to our report on Form 10-Q for the quarter ended June 30, 2004).
10.4	2004 Stock Incentive Plan (Incorporated by reference to our Proxy Statement filed June 18, 2004).
10.5	2005 Stock Incentive Plan (incorporated by reference to our Proxy Statement filed June 17, 2005).
10.6	Universal Lease Agreement dated December 5, 2005 by and between Jackson Trotting Association, LLC and Jackson County Fairgrounds (incorporated by reference to our report on Form 10-K for the year ended December 31, 2005).
10.7	Employment Agreement dated October 19, 2006, by and between the Company and Edson R. Arneault (incorporated by reference to our report on Form 8-K filed October 24, 2006).
10.8	First Amendment to Employment Agreement dated as of August 28, 2008, by and between the Company and Edson R. Arneault (filed herewith).
10.9	Second Amendment to Employment Agreement dated as of October 15, 2008, by and between the Company and Edson R. Arneault (filed herewith).
10.10	Consulting Agreement dated as of October 15, 2008, by and between the Company and Edson R. Arneault (filed herewith).

Table of Contents

EXHIBIT NO.	ITEM TITLE
10.11	Second Amendment to Deferred Compensation Agreement dated October 19, 2006, by and between the Company and Edson R. Arneault (incorporated by reference to our report on Form 8-K filed October 24, 2006).
10.12	Agreement dated December 16, 2006 by and between Mountaineer Park, Inc. and Mountaineer Park Horsemen's Benevolent and Protective Association, Inc. (incorporated by reference to our report on Form 10-K filed April 2, 2007).
10.13	Agreement dated February 22, 2007 by and between Presque Isle Downs, Inc. and the Pennsylvania Horsemen's Benevolent and Protective Association Inc. (incorporated by reference to our report on Form 10-K filed April 2, 2007).
10.14	Fifth Amended and Restated Credit Agreement dated September 22, 2006, by and among the Registrant, Mountaineer Park, Inc., Speakeasy Gaming of Las Vegas, Inc., Speakeasy Gaming of Fremont, Inc., Presque Isle Downs, Inc. and Scioto Downs, Inc. (each a wholly-owned subsidiary of the Registrant), and Wells Fargo Bank, National Association (incorporated by reference to our report on Form 8-K filed September 27, 2006).
10.15	First Amendment to Fifth Amended and Restated Credit Agreement dated June 19, 2007, by and among the Company, Mountaineer Park, Inc., Speakeasy Gaming of Las Vegas, Inc., Speakeasy Gaming of Fremont, Inc., Presque Isle Downs, Inc. and Scioto Downs, Inc. (each a wholly-owned subsidiary of the Company), and Wells Fargo Bank, National Association (incorporated by reference to our report on Form 8-K filed June 22, 2007).
10.16	Second Amendment to Fifth Amended and Restated Credit Agreement dated March 31, 2008 by and among the Registrant, Mountaineer Park, Inc., Speakeasy Gaming of Las Vegas, Inc., Presque Isle Downs, Inc. and Scioto Downs, Inc. (each a wholly-owned subsidiary of the Registrant), and Wells Fargo Bank, National Association (incorporated by reference to our report on Form 10-K filed April 13, 2008).
10.17	Fourth Amendment to Fifth Amended and Restated Credit Agreement dated December 19, 2008, by and among the Registrant, Mountaineer Park, Inc., Speakeasy Gaming of Las Vegas, Inc., Presque Isle Downs, Inc., and Scioto Downs, Inc. (each a wholly-owned subsidiary of the Registrant), and Wells Fargo Bank, National Association (incorporated by reference to our report on Form 10-K filed December 19, 2008).
10.18	Revolving Credit Note dated March 31, 2008, executed by the Company, Mountaineer Park, Inc., Speakeasy Gaming of Las Vegas, Inc., Presque Isle Downs, Inc. and Scioto Downs, Inc. (incorporated by reference to our report on Form 10-K filed April 3, 2008).
10.19	Stock Purchase Agreement dated June 26, 2007, by and between the Company and TLC Casino Enterprises, Inc. (incorporated by reference to our report on Form 8-K filed June 18, 2007).
10.20	Employment Agreement dated August 15, 2007, executed by the Company and John W. Bittner, Jr. (incorporated by reference to our report on Form 10-Q for the quarter ended September 30, 2007).
10.21	Amendment to Employment Agreement dated September 8, 2008, by and between the Company and John W. Bittner, Jr. (filed herewith).
10.22	Employment Agreement dated August 15, 2007, executed by the Company and Patrick J. Arneault (incorporated by reference to our report on Form 10-Q for the quarter ended September 30, 2007).
10.23	Amendment to Employment Agreement dated September 8, 2008 by and between the Company and Patrick J. Arneault (filed herewith).

Table of Contents

EXHIBIT NO.	ITEM TITLE
10.24	2007 Stock Incentive Plan (incorporated by reference to our Proxy Statement filed April 30, 2007).
10.25	Asset Purchase and Sale Agreement dated January 11, 2008, by and between the Company and Lucky Lucy D LLC (incorporated by reference to our report on Form 8-K filed January 15, 2008).
10.26	Real Property Purchase and Sale Agreement dated January 11, 2008, by and between the Company and Ganaste LLC (incorporated by reference to our report on Form 8-K filed January 15, 2008).
10.27	Master Lease dated January 11, 2008, by and between Company and Ganaste LLC (incorporated by reference to our report on Form 8-K filed January 15, 2008).
10.28	Termination Agreement dated January 11, 2008, by and between Company and Ganaste LLC (incorporated by reference to our report on Form 8-K filed January 15, 2008).
10.29	Amendment dated February 29, 2008, to Stock Purchase Agreement dated June 26, 2007, by and among the Company and TLC Casino Enterprises, Inc. (incorporated by reference to our report on Form 8-K filed March 6, 2008).
10.30	Employment Agreement dated May 15, 2008, by and between the Company and David R. Hughes (incorporated by reference to our report on Form 10-Q filed on August 8, 2008).
10.31	Amendment to Employment Agreement dated October 16, 2008, by and between the Company and David R. Hughes (filed herewith).
14.1	Code of Ethics and Business Conduct of the Company (incorporated by reference to our report on Form 10-K for the year ended December 31, 2003).
14.2	Amendment to the Company's Code of Ethics and Business Conduct (incorporated by reference to our report on Form 8-K filed April 24, 2007).
21.1	Subsidiaries of the Registrant (filed herewith).
23.1	Consent of Ernst & Young LLP (filed herewith).
31.1	Certification of Robert F. Griffin pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (filed herewith).
31.2	Certification of David R. Hughes pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (filed herewith).
32.1	Certification of Robert F. Griffin in accordance with 18 U.S.C. Section 1350 (filed herewith).
32.2	Certification of David R. Hughes in accordance with 18 U.S.C. Section 1350 (filed herewith).

